

Subsec. (c)(5). Pub. L. 100-647, §3031(g)(2), amended par. (5) generally, substituting provisions relating to the making of appropriate adjustments in amounts included in gross estate for provisions relating to coordination with section 2043.

Subsec. (c)(6). Pub. L. 100-647, §3031(b), added par. (6).  
Subsec. (c)(7), (8). Pub. L. 100-647, §3031(b)[(c)], added pars. (7) and (8).

1987—Subsecs. (c), (d). Pub. L. 100-203 added subsec. (c) and redesignated former subsec. (c) as (d).

1978—Subsec. (a). Pub. L. 95-600, §702(i)(2), struck out provision following par. (2) relating to the retention of voting rights in retained stock.

Subsecs. (b), (c). Pub. L. 95-600, §702(i)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94-455 provided that, for purposes of par. (1), the retention of voting rights in retained stock be considered to be a retention of the enjoyment of that stock.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11601(c), Nov. 5, 1990, 104 Stat. 1388-491, provided that: “The amendments made by this section [amending this section and sections 2207B and 2501 of this title] shall apply in the case of property transferred after December 17, 1987.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title III, §3031(h), Nov. 10, 1988, 102 Stat. 3639, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, any amendment made by this section [enacting section 2207B of this title and amending this section and section 2501 of this title] shall take effect as if included in the provisions of the Revenue Act of 1987 [Pub. L. 100-203, title X] to which such amendment relates.

“(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 2501 of this title] shall apply in cases where the transfer referred to in section 2036(c)(1)(B) of the 1986 Code is on or after June 21, 1988.

“(3) SUBSECTION (f).—If an amount is included in the gross estate of a decedent under section 2036 of the 1986 Code other than solely by reason of section 2036(c) of the 1986 Code, the amendments made by subsection (f) [enacting section 2207B of this title] shall apply to such amount only with respect to property transferred after the date of the enactment of this Act [Nov. 10, 1988].

“(4) CORRECTION PERIOD.—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if—

“(A) during such period, such actions are taken as are necessary to have such section 2036(c)(1) not apply to such transaction (and any such interest), or

“(B) the original transferor and his spouse on January 1, 1990 (or, if earlier, the date of the original transferor’s death), does not hold any interest in the enterprise involved.

“(5) CLARIFICATION OF EFFECTIVE DATE.—For purposes of section 10402(b) of the Revenue Act of 1987 [Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note below], with respect to property transferred on or before December 17, 1987—

“(A) any failure to exercise a right of conversion,

“(B) any failure to pay dividends, and

“(c) [sic] failures to exercise other rights specified in regulations, shall not be treated as a subsequent transfer.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10402(b), Dec. 22, 1987, 101 Stat. 1330-432, provided that: “The amendment made by

subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987.” [For clarification of this note, see section 3031(h)(5) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note above.]

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(i)(3), Nov. 6, 1978, 92 Stat. 2931, provided that: “The amendments made by this subsection [amending this section] shall apply to transfers made after June 22, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2009(e)(1), Oct. 4, 1976, 90 Stat. 1896, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers made after June 22, 1976.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

### § 2037. Transfers taking effect at death

#### (a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money’s worth), by trust or otherwise, if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

#### (b) Special rules

For purposes of this section, the term “reversionary interest” includes a possibility that property transferred by the decedent—

(1) may return to him or his estate, or

(2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent’s death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent’s gross estate under this section if possession or enjoyment of the property could have been ob-

tained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87-834, §18(a)(2)(E), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

### § 2038. Revocable transfers

#### (a) In general

The value of the gross estate shall include the value of all property—

##### (1) Transfers after June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3 year period ending on the date of the decedent's death.

##### (2) Transfers on or before June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3 year period ending on the date of the decedent's death. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

#### (b) Date of existence of power

For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation,

or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 383; Pub. L. 86-141, §1, Aug. 7, 1959, 73 Stat. 288; Pub. L. 87-834, §18(a)(2)(F), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XIX, §1902(a)(3), title XX, §2001(c)(1)(K), Oct. 4, 1976, 90 Stat. 1804, 1852.)

#### AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-455, §2001(c)(1)(K)(i), substituted “during the 3-year period ending on the date of the decedent's death” for “in contemplation of decedent's death”.

Subsec. (a)(2). Pub. L. 94-455, §2001(c)(1)(K)(ii), substituted “during the 3-year period ending on the date of the decedent's death” for “in contemplation of his death”.

Subsec. (c). Pub. L. 94-455, §1902(a)(3), struck out subsec. (c) which covered the effect of a disability in certain cases by relating a mental disability to relinquish a power to a power, the relinquishment of which would be deemed not to be a transfer for purposes of chapter 4 of the Internal Revenue Code of 1939.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

1959—Subsec. (c). Pub. L. 86-141 added subsec. (c).

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(3) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Amendment by section 2001(c)(1)(K)(i), (ii) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976 but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-141, §2, Aug. 7, 1959, 73 Stat. 289, provided that: “The amendment made by the first section of this Act [amending this section] shall apply only with respect to estates of decedents dying after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by the first section of this Act with respect to any payment made before the date of the enactment of this Act [Aug. 7, 1959].”

### § 2039. Annuities

#### (a) General

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as in-

surance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

**(b) Amount includible**

Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(Aug. 16, 1954, ch. 736, 68A Stat. 384; Pub. L. 85-866, title I, §§23(e), 67(a), Sept. 2, 1958, 72 Stat. 1622, 1658; Pub. L. 87-792, §7(i), Oct. 10, 1962, 76 Stat. 830; Pub. L. 89-365, §2(a), Mar. 8, 1966, 80 Stat. 33; Pub. L. 91-172, title I, §101(j)(23), Dec. 30, 1969, 83 Stat. 528; Pub. L. 92-580, §2(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 93-406, title II, §2007(b)(4), Sept. 2, 1974, 88 Stat. 994; Pub. L. 94-455, title XX, §2009(c)(1)-(3), Oct. 4, 1976, 90 Stat. 1894, 1895; Pub. L. 95-600, title I, §§142(a), (b), 156(c)(4), title VII, §702(j)(1), Nov. 6, 1978, 92 Stat. 2796, 2803, 2931; Pub. L. 96-222, title I, §101(a)(8)(B), Apr. 1, 1980, 94 Stat. 201; Pub. L. 97-34, title III, §§311(d)(1), (h)(4), 313(b)(3), Aug. 13, 1981, 95 Stat. 280, 282, 286; Pub. L. 97-248, title II, §245(a), (b), Sept. 3, 1982, 96 Stat. 524; Pub. L. 97-448, title I, §103(c)(9), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, §491(d)(34), title V, §525(a), July 18, 1984, 98 Stat. 851, 873; Pub. L. 99-514, title XVIII, §§1848(d), 1852(e)(1)(A), Oct. 22, 1986, 100 Stat. 2857, 2868.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514, §1852(e)(1), struck out subsec. (c) which provided an exclusion from gross estate of certain annuity interests created by community property laws.

Subsec. (e). Pub. L. 99-514, §1848(d), struck out “or a bond described in paragraph (3)” after “an annuity described in paragraph (2)” in concluding provisions as such provisions were applicable to obligations issued after Dec. 31, 1983, and prior to repeal of subsec. (e) by Pub. L. 98-369, §525(a), see Effective Date of 1984 Amendment note below.

1984—Subsec. (c). Pub. L. 98-369, §525(a), substituted provisions relating to exception of certain annuity interests created by community property laws for provisions which related to exemption of annuities under certain trusts and plans.

Subsec. (d). Pub. L. 98-369, §525(a), struck out subsec. (d) which related to exemption of certain annuity interests created by community property laws. See subsec. (c) of this section.

Subsec. (e). Pub. L. 98-369, §525(a), struck out subsec. (e) which related to exclusion of individual retirement accounts.

Pub. L. 98-369, §491(d)(34), inserted “or” at end of par. (1), substituted a period for “, or” at end of par. (2), struck out par. (3) which excluded from the value of the gross estate the value of an annuity receivable by any

beneficiary, other than the executor, under a retirement bond described in section 409(a), and substituted in provision following par. (2) “or 408(d)(3)” for “405(d)(3), 408(d)(3), or 409(b)(3)(C)”, and substituted “or annuity” for “, annuity, or bond” wherever appearing.

Subsecs. (f), (g). Pub. L. 98-369, §525(a), struck out subsec. (f) which related to lump sum distributions and an exception where the recipient elects not to take 10-year averaging, and subsec. (g) which related to a \$100,000 limitation on the exclusions under subsecs. (c) and (e).

1983—Subsec. (f)(1). Pub. L. 97-448, §103(c)(9)(A), designated existing provisions as subpar. (A), substituted “without regard to the third sentence of section 402(e)(4)(A))” for “without regard to the next to the last sentence of section 402(e)(4)(A)” in subpar. (A) as so designated, and added subpar. (B).

Subsec. (f)(2). Pub. L. 97-448, §103(c)(9)(B), substituted “An amount described” for “A lump sum distribution described”.

1982—Subsec. (c). Pub. L. 97-248, §245(b), substituted “Subject to the limitation of subsection (g), notwithstanding any other provision of this section” for “Notwithstanding the provisions of this section”.

Subsec. (e). Pub. L. 97-248, §245(b), substituted “Subject to the limitation of subsection (g), notwithstanding any other provision of this section” for “Notwithstanding the provisions of this section”.

Subsec. (g). Pub. L. 97-248, §245(a), added subsec. (g).

1981—Subsec. (c). Pub. L. 97-34, §311(d)(1), provided that for purposes of subsec. (c), any deductible employee contributions, within the meaning of par. (5) of section 72(o), shall be considered as made by a person other than the decedent.

Subsec. (e). Pub. L. 97-34, §313(b)(3), inserted reference to rollover contribution described in section 405(d)(3).

Pub. L. 97-34, §311(h)(4), substituted “section 219” for “section 219 or 220”.

1980—Subsec. (f)(2). Pub. L. 96-222 substituted “(without the application of paragraph (2) thereof), except to the extent that section 402(e)(4)(J) applies to such distribution” for “without the application of paragraph (2) thereof”.

1978—Subsec. (c). Pub. L. 95-600, §142(a), substituted “(other than an amount described in subsection (f))” for “(other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A))” in provisions preceding par. (1).

Subsec. (e). Pub. L. 95-600, §§156(c)(4), 702(j)(1), inserted “section 403(b)(8) (but only to the extent such contribution is attributed to a distribution from a contract described in subsection (c)(3)),” after “403(a)(4)” and inserted “or 220” after “section 219” wherever appearing in provisions following par. (3).

Subsec. (f). Pub. L. 95-600, §142(b), added subsec. (f).

1976—Subsec. (c). Pub. L. 94-455, §2009(c)(2), (3), substituted “other payment (other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A)) receivable by any beneficiary” for “other payment receivable by any beneficiary” in provisions preceding par. (1) and substituted “For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall, to the extent allowable as a deduction under section 404, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent” for “For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent” in provisions following par. (4).

Subsec. (e). Pub. L. 94-455, §2009(c)(1), added subsec. (e).

1974—Subsec. (c). Pub. L. 93-406 inserted reference to section 1452(d) in provisions following par. (4).

1972—Subsec. (d). Pub. L. 92-580 added subsec. (d).

1969—Subsec. (c)(3). Pub. L. 91-172 substituted “section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust),” for “section 503(b) (1), (2), or (3).”

1966—Subsec. (c). Pub. L. 89-365 added par. (4), inserted reference to chapter 73 of title 10 of the United States Code in the enumeration of the plans and contracts set out in the prohibition against allowance of exclusion for that part of the value of the amount payable under the plan or contract in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions made, and provided that, for purposes of this section, amounts payable under chapter 73 of title 10 are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of title 10.

1962—Subsec. (c). Pub. L. 87-792 substituted “was a plan described in section 403(a)” for “met the requirements of section 401(a)(3), (4), (5), and (6)” in par. (2), and inserted sentence providing, for purposes of this subsection, that contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent.

1958—Subsec. (c)(2). Pub. L. 85-866, §67(a), inserted “(4), (5), and (6)” after “section 401(a)(3).”

Subsec. (c)(3) and closing sentences. Pub. L. 85-866, §23(e), added par. (3), inserted “or under contract described in paragraph (3)” in second sentence of subsec. (c) and substituted “paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent’s employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b),” for “this subsection shall” in third sentence of subsec. (c).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVIII, §1852(e)(1)(B), Oct. 22, 1986, 100 Stat. 2868, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 148(d) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(34) 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 this title.

Pub. L. 98-369, div. A, title V, §525(b)(1), (2), (4), July 18, 1984, 98 Stat. 874, as amended by Pub. L. 99-514, title XVIII, §1852(e)(3), Oct. 22, 1986, 100 Stat. 2868, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1984.

“(2) EXCEPTION FOR PARTICIPANTS IN PAY STATUS.—The amendments made by this section shall not apply to the estate of any decedent who—

“(A) was a participant in any plan who was in pay status on December 31, 1984, and

“(B) irrevocably elected the form of the benefit before the date of the enactment of this Act [July 18, 1984].

“(4) IRREVOCABLE ELECTION.—For purposes of paragraph (2) [set out above] and section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective

Date of 1982 Amendment note below], an individual who—

“(A) separated from service before January 1, 1985, with respect to paragraph (2), or January 1, 1983, with respect to section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982, and

“(B) meets the requirements of such paragraph or such section other than the requirement that there be an irrevocable election, and that the individual be in pay status,

shall be treated as having made an irrevocable election and as being in pay status within the time prescribed with respect to a form of benefit if such individual does not change such form of benefit before death.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §245(c), Sept. 3, 1982, 96 Stat. 525, as amended by Pub. L. 98-369, div. A, title V, §525(b)(3), July 18, 1984, 98 Stat. 874, provided that: “The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1982, except that such amendments shall not apply to the estate of any decedent who was a participant in any plan who was in pay status on December 31, 1982, and irrevocably elected before January 1, 1983, the form of benefit.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(d)(1), (h)(4) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

Amendment by section 313(b)(3) of Pub. L. 97-34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 applicable with respect to the estates of decedents dying after Apr. 1, 1980, see section 101(b)(1)(D) of Pub. L. 96-222, set out as a note under section 691 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title I, §142(c), Nov. 6, 1978, 92 Stat. 2796, provided that: “The amendments made by this section [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1978.”

Amendment by section 156(c)(4) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as a note under section 403 of this title.

Pub. L. 95-600, title VII, §702(j)(3)(A), Nov. 6, 1978, 92 Stat. 2932, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2009(e)(3)(A), Oct. 4, 1976, 90 Stat. 1896, provided that: “The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending this section] shall apply to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section

2007(c) of Pub. L. 93-406, set out as a note under section 122 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-580, §2(b), Oct. 27, 1972, 86 Stat. 1276, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estate of decedents for which the period prescribed by the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for filing of a claim for credit or refund of an overpayment of estate tax ends on or after the date of enactment of this Act [Oct. 27, 1972]. No interest shall be allowed or paid on any overpayment of estate tax resulting from the application of the amendment made by subsection (a) for any period prior to the expiration of the one hundred and eightieth day following the date of the enactment of this Act."

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-365, §2(c), Mar. 8, 1966, 80 Stat. 33, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to decedents dying after December 31, 1965. The amendments made by subsection (b) [amending section 2517 of this title] shall apply with respect to calendar years after 1965."

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment 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 22 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 23(e) of Pub. L. 85-866 applicable with respect to estates of decedents dying after Dec. 31, 1957, see section 23(g) of Pub. L. 85-866, set out as a note under section 403 of this title.

Pub. L. 85-866, title I, §67(b), Sept. 2, 1958, 72 Stat. 1659, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1953."

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 2040. Joint interests

#### (a) General rule

The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property

or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

#### (b) Certain joint interests of husband and wife

##### (1) Interests of spouse excluded from gross estate

Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

##### (2) Qualified joint interest defined

For purposes of paragraph (1), the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as—

(A) tenants by the entirety, or

(B) joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87-834, §18(a)(2)(G), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2002(c)(1), (3), Oct. 4, 1976, 90 Stat. 1855, 1856; Pub. L. 95-600, title V, §511(a), title VII, §702(k)(2), Nov. 6, 1978, 92 Stat. 2881, 2932; Pub. L. 96-222, title I, §105(a)(3), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97-34, title IV, §403(c)(1)-(3)(A), Aug. 13, 1981, 95 Stat. 301, 302.)

#### AMENDMENTS

1981—Subsec. (a). Pub. L. 97-34, §403(c)(2), substituted "joint tenants with right of survivorship" for "joint tenants" in three places.

Subsec. (b)(2). Pub. L. 97-34, §403(c)(1), in redefining "qualified joint interest" substituted provision defining term as meaning any interest in property held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants for provision defining the term as meaning any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if such joint interest was created by the decedent, the decedent's spouse, or both, in the case of personal property, the creation of such joint interest constituted in whole or in part a gift for purposes of chapter 12, or in the case of real property, an election under section 2515 applies with respect to the creation of such joint interest, and in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants.

Subsecs. (c) to (e). Pub. L. 97-34, §403(c)(3)(A), repealed subsec. (c) respecting value where spouse of decedent materially participated in farm or other business, subsec. (d) relating to joint interests of husband

and wife created before 1977, and subsec. (e) covering treatment of certain post-1976 terminations.

1980—Subsec. (c)(1). Pub. L. 96-222, §105(a)(3)(B), substituted “subsection (a)” for “subsections (a)”.

Subsec. (c)(2)(C). Pub. L. 96-222, §105(a)(3)(A), added subpar. (C).

1978—Subsec. (c). Pub. L. 95-600, §511(a), added subsec. (c).

Subsecs. (d), (e). Pub. L. 95-600, §702(k)(2), added subsecs. (d) and (e).

1976—Pub. L. 94-455 designated existing provisions as subsec. (a), added heading for subsec. (a), and added subsec. (b).

1962—Pub. L. 87-834 struck out provisions which excepted real property outside of the United States.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title V, §511(b), Nov. 6, 1978, 92 Stat. 2882, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1978.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2002(d)(3), Oct. 4, 1976, 90 Stat. 1856, provided that: “The amendment made by subsection (c) [amending this section and section 2515 of this title] shall apply to joint interests created after December 31, 1976.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

#### CONSIDERATION GIVEN BEFORE JULY 14, 1988 BY DECEDENT TO NONCITIZEN SPOUSE TREATED AS ORIGINALLY BELONGING TO SPOUSE

Pub. L. 101-239, title VII, §7815(d)(16), Dec. 19, 1989, 103 Stat. 2419, as amended by Pub. L. 101-508, title XI, §11701(l)(3), Nov. 5, 1990, 104 Stat. 1388-513, provided that: “For purposes of applying section 2040(a) of the Internal Revenue Code of 1986 with respect to any joint interest to which section 2040(b) of such Code does not apply solely by reason of section 2056(d)(1)(B) of such Code, any consideration furnished before July 14, 1988, by the decedent for such interest to the extent treated as a gift to the spouse of the decedent for purposes of chapter 12 of such Code (or would have been so treated if the donor were a citizen of the United States) shall be treated as consideration originally belonging to such spouse and never acquired by such spouse from the decedent.”

## § 2041. Powers of appointment

### (a) In general

The value of the gross estate shall include the value of all property—

#### (1) Powers of appointment created on or before October 21, 1942

To the extent of any property with respect to which a general power of appointment cre-

ated on or before October 21, 1942, is exercised by the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

### (2) Powers created after October 21, 1942

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

### (3) Creation of another power in certain cases

To the extent of any property with respect to which the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

### (b) Definitions

For purposes of subsection (a)—

#### (1) General power of appointment

The term “general power of appointment” means a power which is exercisable in favor of

the decedent, his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person—

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

## **(2) Lapse of power**

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) \$5,000, or

(B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

## **(3) Date of creation of power**

For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87-834, §18(a)(2)(H), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2009(b)(4)(A), Oct. 4, 1976, 90 Stat. 1894.)

### **AMENDMENTS**

1976—Subsec. (a)(2). Pub. L. 94-455 struck out provision that a disclaimer or renunciation of a power of appointment not be deemed a release of that power.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

### **EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

### **EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

## **§ 2042. Proceeds of life insurance**

The value of the gross estate shall include the value of all property—

### **(1) Receivable by the executor**

To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

### **(2) Receivable by other beneficiaries**

To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that

such policy or proceeds may return to the decedent or his estate.

(Aug. 16, 1954, ch. 736, 68A Stat. 387; Pub. L. 94-455, title XIX, §1906(b)(13) (A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

### § 2043. Transfers for insufficient consideration

#### (a) In general

If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

#### (b) Marital rights not treated as consideration

##### (1) In general

For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration “in money or money's worth”.

##### (2) Exception

For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 388; Pub. L. 98-369, div. A, title IV, §425(a)(1), July 18, 1984, 98 Stat. 803.)

#### AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, designating existing provisions as par. (1) and adding par. (2).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title IV, §425(c)(1), July 18, 1984, 98 Stat. 804, provided that: “The amendments made by subsection (a) [amending this section and section 2053 of this title] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].”

### § 2044. Certain property for which marital deduction was previously allowed

#### (a) General rule

The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

#### (b) Property to which this section applies

This section applies to any property if—

(1) a deduction was allowed with respect to the transfer of such property to the decedent—

(A) under section 2056 by reason of subsection (b)(7) thereof, or

(B) under section 2523 by reason of subsection (f) thereof, and

(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

#### (c) Property treated as having passed from decedent

For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

(Added Pub. L. 97-34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 97-448, title I, §104(a)(1)(B), Jan. 12, 1983, 96 Stat. 2380.)

#### PRIOR PROVISIONS

A prior section 2044 was renumbered section 2045 of this title.

#### AMENDMENTS

1983—Subsec. (c). Pub. L. 97-448 added subsec. (c).

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

### § 2045. Prior interests

Except as otherwise specifically provided by law, sections 2034 to 2042, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 388, §2044; Pub. L. 94-455, title XX, §2001(c)(1)(M), Oct. 4, 1976, 90 Stat. 1853; renumbered §2045, Pub. L. 97-34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304.)

#### PRIOR PROVISIONS

A prior section 2045 was renumbered section 2046 of this title.

#### AMENDMENTS

1976—Pub. L. 94-455 substituted “specifically provided by law” for “specifically provided therein”.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d) of Pub. L. 94-455, set out as a note under section 2001 of this title.

### § 2046. Disclaimers

For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.



(Added Pub. L. 94-455, title XX, §2009(b)(2), Oct. 4, 1976, 90 Stat. 1893, §2045; renumbered §2046, Pub. L. 97-34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304.)

#### EFFECTIVE DATE

Section applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

#### PART IV—TAXABLE ESTATE

Sec.	
2051.	Definition of taxable estate.
[2052.]	Repealed.]
2053.	Expenses, indebtedness, and taxes.
2054.	Losses.
2055.	Transfers for public, charitable, and religious uses.
2056.	Bequests, etc., to surviving spouse.
2056A.	Qualified domestic trust.
[2057.]	Repealed.]
2058.	State death taxes.

#### AMENDMENTS

2014—Pub. L. 113-295, div. A, title II, §221(a)(97)(A), Dec. 19, 2014, 128 Stat. 4051, which directed amendment of part IV of subchapter A of chapter 11 of this title by striking item 2057 from the table of sections for “such subpart”, was executed by striking item 2057 “Family-owned business interests” from the table of sections for this part, to reflect the probable intent of Congress.

2001—Pub. L. 107-16, title V, §532(c)(14), June 7, 2001, 115 Stat. 75, added item 2058.

1998—Pub. L. 105-206, title VI, §6006(b)(1)(F), July 22, 1998, 112 Stat. 808, added item 2057.

1990—Pub. L. 101-508, title XI, §11704(a)(39), Nov. 5, 1990, 104 Stat. 1388-520, amended directory language of section 5033(a)(3) of Pub. L. 100-647. See 1988 Amendment note below.

Pub. L. 101-508, title XI, §11704(a)(16), Nov. 5, 1990, 104 Stat. 1388-518, substituted “trust” for “trusts” in item 2056A.

1989—Pub. L. 101-239, title VII, §7304(a)(2)(E), Dec. 19, 1989, 103 Stat. 2353, struck out item 2057 “Sales of employer securities to employee stock ownership plans or worker-owned cooperatives”.

1988—Pub. L. 100-647, title V, §5033(a)(3), Nov. 10, 1988, 102 Stat. 3672, as amended by Pub. L. 101-508, title XI, §11704(a)(39), Nov. 5, 1990, 104 Stat. 1388-520, added item 2056A.

1986—Pub. L. 99-514, title XI, §1172(b)(3), Oct. 22, 1986, 100 Stat. 2515, added item 2057.

1981—Pub. L. 97-34, title IV, §427(b), Aug. 13, 1981, 95 Stat. 318, struck out item 2057 “Bequests, etc., to certain minor children”.

1976—Pub. L. 94-455, title XX, §§2001(c)(1)(N)(iv), 2007(b), Oct. 4, 1976, 90 Stat. 1853, 1890, added item 2057 and struck out item 2052 “Exemption”.

#### § 2051. Definition of taxable estate

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the deductions provided for in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 388; Pub. L. 95-600, title VII, §702(r)(2), Nov. 6, 1978, 92 Stat. 2938.)

#### AMENDMENTS

1978—Pub. L. 95-600 struck out “exemption and” after “gross estate the”.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(r)(5), Nov. 6, 1978, 92 Stat. 2939, provided that: “The amendments made by

this subsection [amending this section and sections 1016, 6324B, and 6698A of this title] shall apply to estates of decedents dying after December 31, 1976.”

#### [§ 2052. Repealed. Pub. L. 94-455, title XX, § 2001(a)(4), Oct. 4, 1976, 90 Stat. 1848]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 389, provided for an exemption of \$60,000 to be deducted from gross estate in determining value of taxable estate.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2001 of this title.

#### § 2053. Expenses, indebtedness, and taxes

##### (a) General rule

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts—

- (1) for funeral expenses,
- (2) for administration expenses,
- (3) for claims against the estate, and
- (4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

##### (b) Other administration expenses

Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

##### (c) Limitations

##### (1) Limitations applicable to subsections (a) and (b)

##### (A) Consideration for claims

The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

##### (B) Certain taxes

Any income taxes on income received after the death of the decedent, or property taxes

not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

**(C) Certain claims by remaindermen**

No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044.

**(D) Section 6166 interest**

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

**(2) Limitations applicable only to subsection (a)**

In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

**(d) Certain foreign death taxes**

**(1) In general**

Notwithstanding the provisions of subsection (c)(1)(B), for purposes of the tax imposed by section 2001, the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055. The determination under this paragraph of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary.

**(2) Condition for allowance of deduction**

No deduction shall be allowed under paragraph (1) for a foreign death tax specified therein unless the decrease in the tax imposed

by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

**(3) Effect on credit for foreign death taxes of deduction under this subsection**

**(A) Election**

An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

**(B) Cross reference**

See section 2014(f) for the effect of a deduction taken under this paragraph on the credit for foreign death taxes.

**(e) Marital rights**

For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 389; Feb. 20, 1956, ch. 63, § 2, 70 Stat. 23; Pub. L. 85-866, title I, § 102(c)(3), Sept. 2, 1958, 72 Stat. 1674; Pub. L. 86-175, § 1, Aug. 21, 1959, 73 Stat. 396; Pub. L. 94-455, title XIX, §§ 1902(a)(12)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834; Pub. L. 98-369, div. A, title IV, § 425(a)(2), title X, § 1027(b), July 18, 1984, 98 Stat. 804, 1031; Pub. L. 100-647, title I, § 1011A(g)(11), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 105-34, title V, § 503(b)(1), title X, § 1073(b)(3), Aug. 5, 1997, 111 Stat. 853, 948; Pub. L. 107-16, title V, § 532(c)(5), June 7, 2001, 115 Stat. 74; Pub. L. 107-134, title I, § 103(b)(2), Jan. 23, 2002, 115 Stat. 2431.)

**AMENDMENTS**

2002—Subsec. (d)(3)(B). Pub. L. 107-134 substituted "section 2011(d)" for "section 2011(e)".

2001—Subsec. (d). Pub. L. 107-16 substituted "Certain foreign death taxes" for "Certain State and foreign death taxes" in heading and amended text generally, revising and restating provisions of pars. (1) to (3) so as to eliminate provisions relating to deduction for State death taxes.

1997—Subsec. (c)(1)(B). Pub. L. 105-34, § 1073(b)(3), struck out at end "This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d)."

Subsec. (c)(1)(D). Pub. L. 105-34, § 503(b)(1), added subpar. (D).

1988—Subsec. (c)(1)(B). Pub. L. 100-647, inserted at end "This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d)."

1984—Subsec. (c)(1)(C). Pub. L. 98-369, § 1027(b), added subpar. (C).

Subsec. (e). Pub. L. 98-369, § 425(a)(2), substituted "For provisions treating certain relinquishments of marital

rights as consideration in money or money's worth, see section 2043(b)(2)" for "For provisions that relinquishment of marital rights shall not be deemed a consideration 'in money or money's worth,' see section 2043(b)."

1976—Subsec. (d)(1). Pub. L. 94-455 struck out "or his delegate" after "Secretary" in provisions preceding subpar. (A) and following subpar. (B) and struck out "or Territory" after "a State" in subpar. (A).

1959—Subsec. (d). Pub. L. 86-175 inserted a reference to foreign death taxes in heading of subsection and par. (3) and in text of par. (2), redesignated provisions of par. (1) as par. (1)(A) and sentence pertaining to exercise of privilege of election, added par. (2) and sentence for determining location of property, redesignated provisions of par. (3) as par. (3)(B) in part, and added par. (3)(A) and the part of (B) relating to foreign death taxes.

1958—Subsec. (d)(1). Pub. L. 85-866 struck out "or any possession of the United States," after "District of Columbia."

1956—Subsecs. (d), (e). Act Feb. 20, 1956, added subsec. (d) and redesignated former subsec. (d) as (e).

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-134, title I, §103(d), Jan. 23, 2002, 115 Stat. 2431, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 2011 and 2201 of this title] shall apply to estates of decedents—

"(A) dying on or after September 11, 2001; and

"(B) in the case of individuals dying as a result of the April 19, 1995, terrorist attack, dying on or after April 19, 1995.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 503(b)(1) of Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1997, with special rule in case of estate of any decedent dying before Jan. 1, 1998, with respect to which there is an election under section 6166 of this title, see section 503(d) of Pub. L. 105-34, set out as a note under section 163 of this title.

Amendment by section 1073(b)(3) of Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105-34, set out as an Effective Date of Repeal note under section 4980A of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 425(a)(2) of Pub. L. 98-369 applicable to estates of decedents dying after July 18, 1984, see section 425(c)(1) of Pub. L. 98-369, set out as a note under section 2043 of this title.

Pub. L. 98-369, div. A, title X, §1027(c), July 18, 1984, 98 Stat. 1032, provided that: "The amendments made by this section [amending this section and section 2056 of this title] shall take effect as if included in the amend-

ment made by section 403 of the Economic Recovery Tax Act of 1981 [section 403 of Pub. L. 97-34, see Effective Date of 1981 Amendment note set out under section 2056 of this title]."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(12)(B) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-175, §4, Aug. 21, 1959, 73 Stat. 397, provided that: "The amendments made by the preceding sections of this Act [amending this section and sections 2011 and 2014 of this title] shall apply with respect to the estates of decedents dying on or after July 1, 1955."

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85-866, set out as a note under section 2014 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Act Feb. 20, 1956, ch. 63, §4, 70 Stat. 25, as amended by act Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095, provided that: "The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by sections 2 and 3 of this Act [amending this section and section 2011 of this title], and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953."

### § 2054. Losses

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise.

(Aug. 16, 1954, ch. 736, 68A Stat. 390.)

### § 2055. Transfers for public, charitable, and religious uses

#### (a) In general

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers—

(1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not partici-

pate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(5) to an employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of section 664(g).

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer. Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

**(b) Powers of appointment**

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

**(c) Death taxes payable out of bequests**

If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

**(d) Limitation on deduction**

The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

**(e) Disallowance of deductions in certain cases**

(1) No deduction shall be allowed under this section for a transfer to or for the use of an or-

ganization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

**(3) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—**

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) QUALIFIED REFORMATION.—For purposes of this paragraph, the term “qualified reformation” means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if—

(i) any difference between—

(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

(II) the actuarial value (as so determined) of the reformable interest,

does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of—

(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

(II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

(C) REFORMABLE INTEREST.—For purposes of this paragraph—

(i) IN GENERAL.—The term “reformable interest” means any interest for which a deduction would be allowable under subsection

(a) at the time of the decedent's death but for paragraph (2).

(ii) **BENEFICIARY'S INTEREST MUST BE FIXED.**—The term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

(iii) **SPECIAL RULE WHERE TIMELY COMMENCEMENT OF REFORMATION.**—Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after—

(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

(II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.

(iv) **SPECIAL RULE FOR WILL EXECUTED BEFORE JANUARY 1, 1979, ETC.**—In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

(D) **QUALIFIED INTEREST.**—For purposes of this paragraph, the term "qualified interest" means an interest for which a deduction is allowable under subsection (a).

(E) **LIMITATION.**—The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

(F) **SPECIAL RULE WHERE INCOME BENEFICIARY DIES.**—If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

(G) **STATUTE OF LIMITATIONS.**—The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation (or other proceeding pursuant to subparagraph (J))<sup>1</sup> has occurred.

(H) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

(I) **REFORMATIONS PERMITTED IN CASE OF REMAINDER INTERESTS IN RESIDENCE OR FARM, POOLED INCOME FUNDS, ETC.**—The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure—

(i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or

(ii) to meet the requirements of section 642(c)(5).

(J) **VOID OR REFORMED TRUST IN CASES OF INSUFFICIENT REMAINDER INTERESTS.**—In the case of a trust that would qualify (or could be reformed to qualify pursuant to subparagraph (B)) but for failure to satisfy the requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust may be—

(i) declared null and void ab initio, or

(ii) changed by reformation, amendment, or otherwise to meet such requirement by reducing the payout rate or the duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement,

pursuant to a proceeding that is commenced within the period required in subparagraph (C)(iii). In a case described in clause (i), no deduction shall be allowed under this title for any transfer to the trust and any transactions entered into by the trust prior to being declared void shall be treated as entered into by the transferor.

(4) **WORKS OF ART AND THEIR COPYRIGHTS TREATED AS SEPARATE PROPERTIES IN CERTAIN CASES.**—

(A) **IN GENERAL.**—In the case of a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties for purposes of paragraph (2).

(B) **WORK OF ART DEFINED.**—For purposes of this paragraph, the term "work of art" means any tangible personal property with respect to which there is a copyright under Federal law.

(C) **QUALIFIED CONTRIBUTION DEFINED.**—For purposes of this paragraph, the term "qualified contribution" means any transfer of property to a qualified organization if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501.

(D) **QUALIFIED ORGANIZATION DEFINED.**—For purposes of this paragraph, the term "qualified organization" means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). For purposes of the preceding sentence, a private operating foundation (as defined in section

<sup>1</sup> So in original. Probably should be followed by an additional closing parenthesis.

4942(j)(3)) shall not be treated as a private foundation.

(5) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

**(f) Special rule for irrevocable transfers of easements in real property**

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

**(g) Cross references**

(1) For option as to time for valuation for purpose of deduction under this section, see section 2032.

(2) For treatment of certain organizations providing child care, see section 501(k).

(3) For exemption of gifts and bequests to or for the benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (2 U.S.C. 161).

(4) For treatment of gifts and bequests for the benefit of the Naval Historical Center as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code.

(5) For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191).

(6) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(7) For treatment of gifts or bequests of money accepted by the Attorney General for credit to “Commissary Funds, Federal Prisons,” as gifts or bequests to or for the use of the United States, see section 4043 of title 18, United States Code.

(8) For payment of tax on gifts and bequests of United States obligations to the United States, see section 3113(e) of title 31, United States Code.

(9) For treatment of gifts and bequests for benefit of the Naval Academy as gifts or bequests to or for the use of the United States, see section 6973 of title 10, United States Code.

(10) For treatment of gifts and bequests for benefit of the Naval Academy Museum as gifts or bequests to or for the use of the United States, see section 6974 of title 10, United States Code.

(11) For exemption of gifts and bequests received by National Archives Trust Fund Board, see section 2308 of title 44, United States Code.

**(12) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.**

(Aug. 16, 1954, ch. 736, 68A Stat. 390; Aug. 6, 1956, ch. 1020, §1, 70 Stat. 1075; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, §201(d)(1), (4)(A), Dec. 30, 1969, 83 Stat. 560, 561; Pub. L. 91-614, title I, §101(c), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 93-483, §3(a), Oct. 26, 1974, 88 Stat. 1457; Pub. L. 94-455, title XIII, §§1304(a), 1307(d)(1)(B)(ii), (C), 1313(b)(2), title XIX, §§1902(a)(4), (12)(A), 1906(b)(13)(A), title XX, §2009(b)(4)(B), (C), title XXI, §2124(e)(2), Oct. 4, 1976, 90 Stat. 1715, 1727, 1730, 1804, 1805, 1834, 1894, 1919; Pub. L. 95-600, title V, §514(a), Nov. 6, 1978, 92 Stat. 2883; Pub. L. 96-222, title I, §105(a)(4)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96-465, title II, §2206(e)(4), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 96-605, title III, §301(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97-34, title IV, §423(a), Aug. 13, 1981, 95 Stat. 316; Pub. L. 97-248, title II, §286(b)(2), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-258, §3(f)(1), (2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97-473, title II, §202(b)(5), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, §§1022(a), 1032(b)(2), July 18, 1984, 98 Stat. 1026, 1033; Pub. L. 99-514, title XIV, §1422(a), Oct. 22, 1986, 100 Stat. 2716; Pub. L. 100-203, title X, §10711(a)(3), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 104-201, div. A, title X, §1073(b)(3), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 105-34, title X, §1089(b)(3), (5), title XV, §1530(c)(7), Aug. 5, 1997, 111 Stat. 960, 961, 1078; Pub. L. 109-280, title XII, §§1218(b), 1234(b), Aug. 17, 2006, 120 Stat. 1081, 1100; Pub. L. 110-172, §3(d)(1), Dec. 29, 2007, 121 Stat. 2474.)

REFERENCES IN TEXT

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (g)(6), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Sections 1218(b) and 1234(b) of Pub. L. 109-280, which directed the amendment of section 2055 without specifying the act to be amended, were executed to this section, which is section 2055 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsecs. (g), (h). Pub. L. 110-172 redesignated subsec. (h) as (g) and struck out heading and text of former subsec. (g). Text read as follows:

“(1) IN GENERAL.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

“(A) the fair market value of the property at the time of the initial fractional contribution, or

“(B) the fair market value of the property at the time of the additional contribution.

“(2) DEFINITIONS.—For purposes of this paragraph—

“(A) ADDITIONAL CONTRIBUTION.—The term ‘additional contribution’ means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.

“(B) INITIAL FRACTIONAL CONTRIBUTION.—The term ‘initial fractional contribution’ means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent’s entire interest in any tangible personal property for which a deduction was allowed under section 170.”

2006—Subsec. (e)(5). Pub. L. 109-280, §1234(b), added par. (5). See Codification note above.

Subsecs. (g), (h). Pub. L. 109-280, §1218(b), added subsec. (g) and redesignated former subsec. (g) as (h). See Codification note above.

1997—Subsec. (a)(5). Pub. L. 105-34, §1530(c)(7), added par. (5).

Subsec. (e)(3)(G). Pub. L. 105-34, §1089(b)(5), inserted “(or other proceeding pursuant to subparagraph (J))” after “reformation”.

Subsec. (e)(3)(J). Pub. L. 105-34, §1089(b)(3), added subpar. (J).

1996—Subsec. (g)(4). Pub. L. 104-201 amended par. (4) generally, substituting reference to Naval Historical Center for reference to Office of Naval Records and History.

1987—Subsec. (a)(2), (3). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsecs. (f), (g). Pub. L. 99-514 added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Subsec. (e)(3). Pub. L. 98-369, §1022(a), amended par. (3) generally, substituting provisions relating to reformations to comply with par. (2), defining “qualified reformation”, “reformable interest”, and “qualified interest”, and setting forth limitations on the deduction, a special rule where the income beneficiary dies, statute of limitations, regulations prescribed by the Secretary, and reformations permitted in the case of remainder interests in a residence or farm, pooled income funds, etc., for former par. (3), which provided: “In the case of a will executed before December 31, 1978, or a trust created before such date, if a deduction is not allowable at the time of the decedent’s death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1981, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1981, (which are required to amend or conform the governing instrument), become final, so that the interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to special rules with respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed.”

Subsec. (f)(2). Pub. L. 98-369, §1032(b)(2), added par. (2), and redesignated former pars. (2) to (11) as pars. (3) to (12), respectively.

1983—Subsec. (f)(11). Pub. L. 97-473 added par. (11).

1982—Subsec. (a). Pub. L. 97-248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of par. (2).

Subsec. (f)(6). Pub. L. 97-258, §3(f)(1), substituted “section 4043 of title 18, United States Code” for “section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s-4)”.

Subsec. (f)(7). Pub. L. 97-258, §3(f)(2), substituted “section 3113(e) of title 31, United States Code” for “section 24 of the Second Liberty Bond Act (31 U.S.C. 757e)”.

1981—Subsec. (e)(4). Pub. L. 97-34 added par. (4).

1980—Subsec. (e)(3). Pub. L. 96-605 substituted “December 31, 1978” for “December 31, 1977” and “December 31, 1981” for “December 31, 1978” in two places.

Pub. L. 96-222 substituted “such subparagraph (A) or (B)” for “such subparagraph (a) or (B)” and “so that the interest” for “so that interest”.

Subsec. (f)(5). Pub. L. 96-465, among other changes, inserted references to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

1978—Subsec. (e)(3). Pub. L. 95-600 inserted “or (B)” before “of paragraph (2)”, substituted “on or before December 31, 1978” for “on or before December 31, 1977” wherever appearing and “which meets the requirements of such subparagraph (a) or (B) (as the case may be),” for “which is a charitable remainder annuity trust, a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).”

1976—Subsec. (a). Pub. L. 94-455, §§1307(d)(1)(B)(ii), (C), 1313(b)(2), 1902(a)(12)(A), 2009(b)(4)(B), (C), struck out “(including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)” after “or transfers” in provisions preceding par. (1), struck out “Territory,” after “State,” in par. (1), inserted “, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment),” after “encouragement of art” and substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation,” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation,” in par. (2), substituted “such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation,” for “no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation,” in par. (3), and, in provisions following par. (4), substituted “a qualified disclaimer” for “an irrevocable disclaimer” and “such qualified disclaimer” for “such irrevocable disclaimer”.

Subsec. (b). Pub. L. 94-455, §1902(a)(4)(A), struck out provisions under which a bequest in trust, if the surviving spouse of the decedent was entitled for life to all of the net income from the trust and the surviving spouse had a power of appointment over the corpus of that trust exercisable by will in favor of, among others, organizations described in subsec. (a)(2), could be deemed a transfer to the organization by the decedent under certain conditions.

Subsec. (e)(2). Pub. L. 94-455, §2124(e)(2), substituted “(other than an interest described in section 170(f)(3)(B))” for “(other than a remainder interest in a personal residence or farm or an undivided portion of the decedent’s entire interest in property)” in provisions preceding subpar. (A).

Subsec. (e)(3). Pub. L. 94-455, §1304(a), §1906(b)(13)(A), substituted “will executed before December 31, 1977,” for “will executed before September 21, 1974,” and “amended or conformed on or before December 31, 1977, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1977” for “amended or conformed on or before

December 31, 1975, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1975" and struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94-455, §1902(a)(4)(B), extended par. (2) by inserting reference to gifts, struck out par. (3) which made a cross reference to section 2 of the Act of Aug. 8, 1946 (60 Stat. 924; 5 U.S.C. 393) for construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, redesignated pars. (4)–(11) as (3)–(10), respectively, substituted "For treatment of gifts and bequests for the benefit of the Office of Naval Records and History as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code" for "For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U.S.C. 419b)" in par. (3) as so redesignated, substituted "For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191)" for "For exemption of bequests to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U.S.C. 19c)" in par. (4) as so redesignated, and corrected obsolete and inaccurate references in pars. (5)–(10) as so redesignated.

1974—Subsec. (e)(3). Pub. L. 93-483 added par. (3).

1970—Subsec. (b)(2)(C). Pub. L. 91-614 substituted "6 months" for "one year".

1969—Subsec. (a)(2). Pub. L. 91-172, §201(d)(4)(A) (i), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(3). Pub. L. 91-172, §201(d)(4)(A)(ii), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (e). Pub. L. 91-172, §201(d)(1), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1958—Subsec. (e). Pub. L. 85-866 substituted "503" for "504".

1956—Subsec. (b). Act Aug. 6, 1956, designated existing provisions as par. (1) and added par. (2).

#### CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97-241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(b) of Pub. L. 109-280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

Amendment by section 1234(b) of Pub. L. 109-280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1089(b)(3), (5) of Pub. L. 105-34 applicable to transfers in trust after July 28, 1997, with

special rule for certain decedents, see section 1089(b)(6) of Pub. L. 105-34, set out as a note under section 664 of this title.

Amendment by section 1530(c)(7) of Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XIV, §1422(e), Oct. 22, 1986, 100 Stat. 2717, provided that: "The amendments made by this section [amending this section and sections 2106 and 2522 of this title] shall apply to transfers and contributions made after December 31, 1986."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title X, §1022(e), July 18, 1984, 98 Stat. 1029, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SUBSECTIONS (a), (b), AND (c).—The amendments made by subsections (a), (b), and (c) [amending this section and sections 170 and 2522 of this title] shall apply to reformations after December 31, 1978; except that such amendments shall not apply to any reformation to which section 2055(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) applies. For purposes of applying clause (iii) of section 2055(e)(3)(C) of such Code (as amended by this section), the 90th day described in such clause shall be treated as not occurring before the 90th day after the date of the enactment of this Act.

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 664 of this title] shall apply to transfers after December 31, 1978.

"(3) STATUTE OF LIMITATIONS.—

"(A) IN GENERAL.—If on the date of the enactment of this Act [July 18, 1984] (or at any time before the date 1 year after such date of enactment), credit or refund of any overpayment of tax attributable to the amendments made by this section is barred by any law or rule of law, such credit or refund of such overpayment may nevertheless be made if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

"(B) NO INTEREST WHERE STATUTE CLOSED ON DATE OF ENACTMENT.—In any case where the making of the credit or refund of the overpayment described in subparagraph (A) is barred on the date of the enactment of this Act [July 18, 1984], no interest shall be allowed with respect to such overpayment (or any related adjustment) for the period before the date 180 days after the date on which the Secretary of the Treasury (or his delegate) is notified that the reformation has occurred."

Amendment by section 1032(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97-248, set out as a note under section 501 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §423(c)(1), Aug. 13, 1981, 95 Stat. 317, provided that: "The amendment made by sub-



section (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981.”

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96-605, title III, §301(b)(1), Dec. 28, 1980, 94 Stat. 3531, provided that: “The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after December 31, 1969.”

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EXTENSION OF 1978 AMENDMENT; CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Pub. L. 96-605, title III, §301(b)(2), Dec. 28, 1980, 94 Stat. 3531, provided that: “Section 514(b) [section 514(b) of Pub. L. 95-600, set out below] (and section 514(c) [section 514(c) of Pub. L. 95-600, set out below] insofar as it relates to section 514(b)) of the Revenue Act of 1978 shall be applied as if the amendment made by subsection (a) [amending this section] had been included in the amendment made by section 514(a) of such Act [section 514(a) of Pub. L. 95-600, amending this section].”

#### EFFECTIVE DATE OF 1978 AMENDMENT; CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Pub. L. 95-600, title V, §514(c), as added by Pub. L. 96-222, title I, §105(a)(4)(B), Apr. 1, 1980, 94 Stat. 219; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) FOR SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after December 31, 1969.

“(2) FOR SUBSECTION (b).—Subsection (b) [section 514(b) of Pub. L. 95-600, set out below]—

“(A) insofar as it relates to section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to transfers in trust and contributions made after July 31, 1969, and

“(B) insofar as it relates to section 2522 of the Internal Revenue Code of 1986 shall apply to transfers made after December 31, 1969.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIII, §1304(c), Oct. 4, 1976, 90 Stat. 1716, provided that: “The amendments made by this section [amending this section] shall apply in the case of decedents dying after December 31, 1969.”

Amendment by section 1307(d)(1)(B)(ii), (C) of Pub. L. 94-455, applicable to estates of decedents dying after Dec. 31, 1976, see section 1307(e) of Pub. L. 94-455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(2) of Pub. L. 94-455 applicable on day following Oct. 4, 1976, see section 1313(d) of Pub. L. 94-455, set out as a note under section 501 of this title.

Amendment by section 1902(a)(4), (12)(A) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Amendment by section 2009(b)(4)(B), (C) of Pub. L. 94-455 applicable with respect to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

Amendment by section 2124(e)(2) of Pub. L. 94-455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94-455, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-483, §3(b), Oct. 26, 1974, 88 Stat. 1458, provided that: “The amendment made by subsection (a)

[amending this section] shall apply with respect to estates of decedents dying after December 31, 1969.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as an Effective Date note under section 2032 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 91-172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(A) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 6, 1956, ch. 1020, §3, 70 Stat. 1075, provided that: “The amendments made by this Act [amending this section and section 6503 of this title] shall apply in the case of decedents dying after August 16, 1954.”

#### TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

#### SPECIAL DONATIONS

Pub. L. 99-514, title XIV, §1422(d), Oct. 22, 1986, 100 Stat. 2717, provided that: “If the Secretary of the Interior acquires by donation after December 31, 1986, a conservation easement (within the meaning of section 2(h) of S. 720, 99th Congress, 1st Session, as in effect on August 16, 1986) [see Pub. L. 99-420, Sept. 25, 1986, §102(h), 99 Stat. 955, 957], such donation shall qualify for treatment under section 2055(f) or 2522(d) of the Internal Revenue Code of 1954 [now 1986], as added by this section.”

#### CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Pub. L. 95-600, title V, §514(b), Nov. 6, 1978, 92 Stat. 2884, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1986.”

#### EXTENSION OF PERIOD FOR FILING CLAIM FOR REFUND

Pub. L. 94-455, title XIII, §1304(b), Oct. 4, 1976, 90 Stat. 1716, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “A claim for refund or credit of an overpayment of the tax imposed by section 2001 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] allowable under section 2055(e)(3) of such Code (as amended by subsection (a)) shall not be denied because of the expiration of the time for filing such a claim under section 6511(a) if such claim is filed not later than June 30, 1978.”

### § 2056. Bequests, etc., to surviving spouse

#### (a) Allowance of marital deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an

amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

**(b) Limitation in the case of life estate or other terminable interest**

**(1) General rule**

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest—

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))—

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

**(2) Interest in unidentified assets**

Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

**(3) Interest of spouse conditional on survival for limited period**

For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if—

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

**(4) Valuation of interest passing to surviving spouse**

In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

**(5) Life estate with power of appointment in surviving spouse**

In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

**(6) Life insurance or annuity payments with power of appointment in surviving spouse**

In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such

spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse—

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of such amounts shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

**(7) Election with respect to life estate for surviving spouse**

**(A) In general**

In the case of qualified terminable interest property—

(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

**(B) Qualified terminable interest property defined**

For purposes of this paragraph—

**(i) In general**

The term “qualified terminable interest property” means property—

(I) which passes from the decedent,

(II) in which the surviving spouse has a qualifying income interest for life, and

(III) to which an election under this paragraph applies.

**(ii) Qualifying income interest for life**

The surviving spouse has a qualifying income interest for life if—

(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

**(iii) Property includes interest therein**

The term “property” includes an interest in property.

**(iv) Specific portion treated as separate property**

A specific portion of property shall be treated as separate property.

**(v) Election**

An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

**(C) Treatment of survivor annuities**

In the case of an annuity included in the gross estate of the decedent under section 2039 (or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033) where only the surviving spouse has the right to receive payments before the death of such surviving spouse—

(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable.

**(8) Special rule for charitable remainder trusts**

**(A) In general**

If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust who is not a charitable beneficiary nor an ESOP beneficiary, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

**(B) Definitions**

For purposes of subparagraph (A)—

**(i) Charitable beneficiary**

The term “charitable beneficiary” means any beneficiary which is an organization described in section 170(c).

**(ii) ESOP beneficiary**

The term “ESOP beneficiary” means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(g)(4)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(g)(1)).

**(iii) Qualified charitable remainder trust**

The term “qualified charitable remainder trust” means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).

**(9) Denial of double deduction**

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

**(10) Specific portion**

For purposes of paragraphs (5), (6), and (7)(B)(iv), the term “specific portion” only includes a portion determined on a fractional or percentage basis.

**(c) Definition**

For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if—

- (1) such interest is bequeathed or devised to such person by the decedent;
- (2) such interest is inherited by such person from the decedent;
- (3) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;
- (4) such interest has been transferred to such person by the decedent at any time;
- (5) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;
- (6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or
- (7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b)(1), be considered as passing from the decedent to a person other than the surviving spouse.

**(d) Disallowance of marital deduction where surviving spouse not United States citizen****(1) In general**

Except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States—

- (A) no deduction shall be allowed under subsection (a), and
- (B) section 2040(b) shall not apply.

**(2) Marital deduction allowed for certain transfers in trust****(A) In general**

Paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified domestic trust.

**(B) Special rule**

If any property passes from the decedent to the surviving spouse of the decedent, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if—

- (i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or
- (ii) such property is irrevocably assigned to such a trust under an irrevocable as-

signment made on or before such date which is enforceable under local law.

**(3) Allowance of credit to certain spouses**

If—

(A) property passes to the surviving spouse of the decedent (hereinafter in this paragraph referred to as the “first decedent”),

(B) without regard to this subsection, a deduction would be allowable under subsection (a) with respect to such property, and

(C) such surviving spouse dies and the estate of such surviving spouse is subject to the tax imposed by this chapter,

the Federal estate tax paid (or treated as paid under section 2056A(b)(7)) by the first decedent with respect to such property shall be allowed as a credit under section 2013 to the estate of such surviving spouse and the amount of such credit shall be determined under such section without regard to when the first decedent died and without regard to subsection (d)(3) of such section.

**(4) Special rule where resident spouse becomes citizen**

Paragraph (1) shall not apply if—

(A) the surviving spouse of the decedent becomes a citizen of the United States before the day on which the return of the tax imposed by this chapter is made, and

(B) such spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a citizen of the United States.

**(5) Reformations permitted****(A) In general**

In the case of any property with respect to which a deduction would be allowable under subsection (a) but for this subsection, the determination of whether a trust is a qualified domestic trust shall be made—

- (i) as of the date on which the return of the tax imposed by this chapter is made, or
- (ii) if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing such return to change such trust into a trust which is a qualified domestic trust, as of the time when the changes pursuant to such proceeding are made.

**(B) Statute of limitations**

If a judicial proceeding described in subparagraph (A)(ii) is commenced with respect to any trust, the period for assessing any deficiency of tax attributable to any failure of such trust to be a qualified domestic trust shall not expire before the date 1 year after the date on which the Secretary is notified that the trust has been changed pursuant to such judicial proceeding or that such proceeding has been terminated.

(Aug. 16, 1954, ch. 736, 68A Stat. 392; Pub. L. 89-621, §1(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 94-455, title XIX, §1902(a)(12)(A), title XX, §§2002(a), 2009(b)(4)(D), (E), Oct. 4, 1976, 90 Stat. 1805, 1854, 1894; Pub. L. 95-600, title VII, §702(g)(1), (2), Nov. 6, 1978, 92 Stat. 2930; Pub. L.

97-34, title IV, § 403(a)(1), (d)(1), Aug. 13, 1981, 95 Stat. 301, 302; Pub. L. 97-448, title I, § 104(a)(2)(A), (8), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 98-369, div. A, title X, § 1027(a), July 18, 1984, 98 Stat. 1031; Pub. L. 100-647, title V, § 5033(a)(1), title VI, § 6152(a), Nov. 10, 1988, 102 Stat. 3670, 3725; Pub. L. 101-239, title VII, § 7815(d)(4)(A), (5), (6), (8), 7816(q), Dec. 19, 1989, 103 Stat. 2415, 2416, 2423; Pub. L. 101-508, title XI, §§ 11701(l)(1), 11702(g)(5), Nov. 5, 1990, 104 Stat. 1388-513, 1388-516; Pub. L. 102-486, title XIX, § 1941(a), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105-34, title XIII, § 1311(a), title XV, § 1530(c)(8), Aug. 5, 1997, 111 Stat. 1044, 1078.)

#### AMENDMENTS

1997—Subsec. (b)(7)(C). Pub. L. 105-34, § 1311(a), inserted “(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)” after “section 2039”.

Subsec. (b)(8). Pub. L. 105-34, § 1530(c)(8), amended par. (8) generally. Prior to amendment, par. (8) read as follows:

“(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

“(A) IN GENERAL.—If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

“(B) DEFINITIONS.—For purposes of subparagraph (A)—

“(i) NONCHARITABLE BENEFICIARY.—The term ‘non-charitable beneficiary’ means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

“(ii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term ‘qualified charitable remainder trust’ means a charitable remainder annuity trust or charitable remainder unitrust (described in section 664).”

1992—Subsec. (b)(10). Pub. L. 102-486 added par. (10).

1990—Subsec. (d)(3). Pub. L. 101-508, § 11702(g)(5), substituted “section 2056A(b)(7)” for “section 2056A(b)(6)”.

Subsec. (d)(4), (5). Pub. L. 101-508, § 11701(l)(1), redesignated par. (4) relating to reformations permitted as par. (5).

1989—Subsec. (b)(7)(C). Pub. L. 101-239, § 7816(q), inserted “included in the gross estate of the decedent under section 2039” after “an annuity”.

Subsec. (d)(2)(B). Pub. L. 101-239, § 7815(d)(4)(A), substituted “Special rule” for “Property passing outside of probate estate” in heading and amended text generally. Prior to amendment, text read as follows: “If any property passes from the decedent to the surviving spouse of the decedent outside of the decedent’s probate estate, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if such property is transferred to such a trust before the day on which the return of the tax imposed by section 2001 is made.”

Subsec. (d)(3). Pub. L. 101-239, § 7815(d)(6), substituted “this chapter” for “section 2001” in subpar. (C) and inserted “and without regard to subsection (d)(3) of such section” after “first decedent died” in concluding provisions.

Subsec. (d)(4). Pub. L. 101-239, § 7815(d)(8), added par. (4) relating to reformations permitted.

Pub. L. 101-239, § 7815(d)(5), added par. (4) relating to special rule where resident spouse becomes citizen.

1988—Subsec. (b)(7)(C). Pub. L. 100-647, § 6152(a), added subpar. (C).

Subsec. (d). Pub. L. 100-647, § 5033(a)(1), added subsec. (d).

1984—Subsec. (b)(7)(B)(ii)(I). Pub. L. 98-369 inserted “, or has a usufruct interest for life in the property”.

1983—Subsec. (b)(7)(B)(ii). Pub. L. 97-448, § 104(a)(8), inserted provision that an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

Subsec. (b)(9). Pub. L. 97-448, § 104(a)(2)(A), added par. (9).

1981—Subsec. (a). Pub. L. 97-34, § 403(a)(1)(B), substituted “subsection (b)” for “subsections (b) and (c)”.

Subsec. (b)(7), (8). Pub. L. 97-34, § 403(d)(1), added pars. (7) and (8).

Subsecs. (c), (d). Pub. L. 97-34, § 403(a)(1)(A), redesignated subsec. (d) as (c) and struck out former subsec. (c) relating to limitation on aggregate of deductions.

1978—Subsec. (c)(1)(B). Pub. L. 95-600 inserted in cl. (ii) “required to be included in a gift tax return” after “with respect to any gift” and inserted following cl. (ii) “For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account”.

1976—Subsec. (a). Pub. L. 94-455, § 2009(b)(4)(E), substituted “subsections (b) and (c)” for “subsections (b), (c), and (d)”.

Subsec. (c)(1). Pub. L. 94-455, § 2002(a), designated existing provisions as subpar. (A), substituted provisions that the aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of \$250,000 or 50 percent of the value of the adjusted gross estate as defined in par. (2) for provisions that the aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed 50 percent of the value of the adjusted gross estate as defined in par. (2), and added subpars. (B) and (C).

Subsec. (c)(2)(B). Pub. L. 94-455, § 1902(a)(12)(A), struck out “Territory,” after “State,” in provisions preceding cl. (i).

Subsecs. (d), (e). Pub. L. 94-455, § 2009(b)(4)(D), redesignated subsec. (e) as (d). Former subsec. (d), which related to disclaimers by the surviving spouse or by other persons, was struck out.

1966—Subsec. (d)(2). Pub. L. 89-621 provided that if the disclaimer is made by the person before the date prescribed for the filing of the estate tax return and if the person does not accept the interest before making the disclaimer, the interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIII, § 1311(b), Aug. 5, 1997, 111 Stat. 1044, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

Amendment by section 1530(c)(8) of Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, § 1941(c), Oct. 24, 1992, 106 Stat. 3036, provided that:

“(1) SUBSECTION (a).—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 24, 1992].

“(B) EXCEPTION.—The amendment made by subsection (a) shall not apply to any interest in property which passes (or has passed) to the surviving spouse of the decedent pursuant to a will (or revocable trust) in existence on the date of the enactment of this Act if—

“(i) the decedent dies on or before the date 3 years after such date of enactment, or

“(ii) the decedent was, on such date of enactment, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

The preceding sentence shall not apply if such will (or revocable trust) is amended at any time after such date of enactment in any respect which will increase the amount of the interest which so passes or alters the terms of the transfer by which the interest so passes.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 2523 of this title] shall apply to gifts made after the date of the enactment of this Act [Oct. 24, 1992].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11701(l)(1) of Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

Amendment by section 11702(g)(5) of Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, § 7815(d)(4)(B), Dec. 19, 1989, 103 Stat. 2415, provided that: “In the case of the estate of a decedent dying before the date of the enactment of this Act [Dec. 19, 1989], the period during which the transfer (or irrevocable assignment) referred to in section 2056(d)(2)(B) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) may be made shall not expire before the date 1 year after such date of enactment.”

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title V, § 5033(d)(1), Nov. 10, 1988, 102 Stat. 3673, provided that: “The amendments made by subsections (a) and (c) [enacting section 2056A of this title and amending this section and section 2106 of this title] shall apply to estates of the decedents dying after the date of the enactment of this Act [Nov. 10, 1988].”

Pub. L. 100-647, title VI, § 6152(c), Nov. 10, 1988, 102 Stat. 3725, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection—

“(A) the amendment made by subsection (a) [amending this section] shall apply with respect to decedents dying after December 31, 1981, and

“(B) the amendment made by subsection (b) [amending section 2523 of this title] shall apply to transfers after December 31, 1981.

“(2) NOT TO APPLY TO EXTENT INCONSISTENT WITH PRIOR RETURN.—In the case of any estate or gift tax return filed before the date of the enactment of this Act [Nov. 10, 1988], the amendments made by this section [amending this section and section 2523 of this title] shall not apply to the extent such amendments would be inconsistent with the treatment of the annuity on such return unless the executor or donor (as the case may be) otherwise elects under this paragraph before the day 2 years after the date of the enactment of this Act.

“(3) EXTENSION OF TIME FOR ELECTION OUT.—The time for making an election under section 2056(b)(7)(C)(ii) or 2523(f)(6)(B) of the 1986 Code (as added by this subsection) shall not expire before the day 2 years after the date of the enactment of this Act (and, if such elec-

tion is made within the time permitted under this paragraph, the requirement of such section 2056(b)(7)(C)(ii) that it be made on the return shall not apply).”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, see Effective Date of 1981 Amendment note below], see section 1027(c) of Pub. L. 98-369, set out as a note under section 2053 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, § 403(e), Aug. 13, 1981, 95 Stat. 305, as amended by Pub. L. 97-448, title I, § 104(a)(10), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 2044 and 2207A of this title, amending this section and sections 691, 2012, 2035, 2040, 2045, 2046, 2519, 2523, 2602, and 6019 of this title, and repealing sections 2515 and 2515A of this title] shall apply to the estates of decedents dying after December 31, 1981.

“(2) The amendments made by paragraphs (1), (2), and (3)(A) of subsection (b) [amending sections 2523 and 6019 of this title], subparagraphs (B) and (C) of subsection (c)(3) [amending section 6019 of this title and repealing sections 2515 and 2515A of this title], and paragraphs (2) and (3)(B) of subsection (d), and paragraph (4)(A) of subsection (d) (to the extent related to the tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [enacting sections 2207A and 2519 of this title and amending section 2523 of this title] shall apply to gifts made after December 31, 1981.

“(3) If—

“(A) the decedent dies after December 31, 1981,

“(B) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

“(C) the formula referred to in subparagraph (B) was not amended to refer specifically to an unlimited marital deduction at any time after the date which is 30 days after the date of enactment of this Act [Aug. 13, 1981], and before the death of the decedent, and

“(D) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a), then the amendment made by subsection (a) shall not apply to the estate of such decedent.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, § 702(g)(3), Nov. 6, 1978, 92 Stat. 2930, provided that: “The amendment made by this subsection [amending this section] shall apply to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(12)(A) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Pub. L. 94-455, title XX, § 2002(d)(1), Oct. 4, 1976, 90 Stat. 1856, provided that:

“(1)(A) Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976.

“(B) If—

“(i) the decedent dies after December 31, 1976, and before January 1, 1979,

“(ii) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before January 1, 1977, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

“(iii) the formula referred to in clause (ii) was not amended at any time after December 31, 1976, and before the death of the decedent, and

“(iv) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent.”

Amendment by section 2009(b)(4)(D), (E) of Pub. L. 94-455 applicable with respect to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as an Effective Date note under section 2518 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-621, §1(b), Oct. 4, 1966, 80 Stat. 872, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying on or after the date of the enactment of this Act [Oct. 4, 1966].”

#### COMMENCEMENT OF JUDICIAL PROCEEDING TO REFORM TRUST

Pub. L. 101-508, title XI, §11701(l)(2), Nov. 5, 1990, 104 Stat. 1388-513, provided that: “The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990].”

#### APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

Pub. L. 101-239, title VII, §7815(d)(14), Dec. 19, 1989, 103 Stat. 2418, provided that: “In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the 1988 Act [Pub. L. 100-647, enacting section 2056A of this title and amending this section and sections 2106 and 2523 of this title] shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. In the case of the estate of an individual dying before the date 3 years after the date of the enactment of this Act [Dec. 19, 1989], or a gift by an individual before the date 3 years after the date of the enactment of this Act, the requirement of the preceding sentence that the individual not be a citizen or resident of the United States shall not apply.”

#### DISCLAIMER OF INTEREST ARISING FROM ESTATES OF PERSONS DYING BEFORE OCT. 4, 1966, HAVING ESTATE TAX RETURN FILING DATE ON OR AFTER JAN. 1, 1965

Pub. L. 89-621, §1(c), Oct. 4, 1966, 80 Stat. 872, provided that in the case of a decedent dying before Oct. 4, 1966, for which the date prescribed for filing estate tax return was on or after Jan. 1, 1965, and as a result of a disclaimer, the surviving spouse became entitled to receive such interest, then such interest was to be considered as having passed from the decedent to the surviv-

ing spouse under certain conditions, with a limit on the amount of deductions allowed.

### § 2056A. Qualified domestic trust

#### (a) Qualified domestic trust defined

For purposes of this section and section 2056(d), the term “qualified domestic trust” means, with respect to any decedent, any trust if—

(1) the trust instrument—

(A) except as provided in regulations prescribed by the Secretary, requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,

(2) such trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by subsection (b), and

(3) an election under this section by the executor of the decedent applies to such trust.

#### (b) Tax treatment of trust

##### (1) Imposition of estate tax

There is hereby imposed an estate tax on—

(A) any distribution before the date of the death of the surviving spouse from a qualified domestic trust, and

(B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

##### (2) Amount of tax

###### (A) In general

In the case of any taxable event, the amount of the estate tax imposed by paragraph (1) shall be the amount equal to—

(i) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the sum of—

(I) the amount involved in such taxable event, plus

(II) the aggregate amount involved in previous taxable events with respect to qualified domestic trusts of such decedent, reduced by

(ii) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the amount referred to in clause (i)(II).

###### (B) Tentative tax where tax of decedent not finally determined

###### (i) In general

If the tax imposed on the estate of the decedent under section 2001 is not finally determined before the taxable event, the amount of the tax imposed by paragraph (1) on such event shall be determined by using the highest rate of tax in effect

under section 2001 as of the date of the decedent's death.

**(ii) Refund of excess when tax finally determined**

If—

(I) the amount of the tax determined under clause (i), exceeds

(II) the tax determined under subparagraph (A) on the basis of the final determination of the tax imposed by section 2001 on the estate of the decedent,

such excess shall be allowed as a credit or refund (with interest) if claim therefor is filed not later than 1 year after the date of such final determination.

**(C) Special rule where decedent has more than 1 qualified domestic trust**

If there is more than 1 qualified domestic trust with respect to any decedent, the amount of the tax imposed by paragraph (1) with respect to such trusts shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death (and the provisions of paragraph (3)(B) shall not apply) unless, pursuant to a designation made by the decedent's executor, there is 1 person—

(i) who is an individual citizen of the United States or a domestic corporation and is responsible for filing all returns of tax imposed under paragraph (1) with respect to such trusts and for paying all tax so imposed, and

(ii) who meets such requirements as the Secretary may by regulations prescribe.

**(3) Certain lifetime distributions exempt from tax**

**(A) Income distributions**

No tax shall be imposed by paragraph (1)(A) on any distribution of income to the surviving spouse.

**(B) Hardship exemption**

No tax shall be imposed by paragraph (1)(A) on any distribution to the surviving spouse on account of hardship.

**(4) Tax where trust ceases to qualify**

If any qualified domestic trust ceases to meet the requirements of paragraphs (1) and (2) of subsection (a), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date of such cessation.

**(5) Due date**

**(A) Tax on distributions**

The estate tax imposed by paragraph (1)(A) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs; except that the estate tax imposed by paragraph (1)(A) on distributions during the calendar year in which the surviving spouse dies shall be due and payable not later than the date on which the estate tax imposed by paragraph (1)(B) is due and payable.

**(B) Tax at death of spouse**

The estate tax imposed by paragraph (1)(B) shall be due and payable on the date 9 months after the date of such death.

**(6) Liability for tax**

Each trustee shall be personally liable for the amount of the tax imposed by paragraph (1). Rules similar to the rules of section 2204 shall apply for purposes of the preceding sentence.

**(7) Treatment of tax**

For purposes of section 2056(d), any tax paid under paragraph (1) shall be treated as a tax paid under section 2001 with respect to the estate of the decedent.

**(8) Lien for tax**

For purposes of section 6324, any tax imposed by paragraph (1) shall be treated as an estate tax imposed under this chapter with respect to a decedent dying on the date of the taxable event (and the property involved shall be treated as the gross estate of such decedent).

**(9) Taxable event**

The term “taxable event” means the event resulting in tax being imposed under paragraph (1).

**(10) Certain benefits allowed**

**(A) In general**

If any property remaining in the qualified domestic trust on the date of the death of the surviving spouse is includible in the gross estate of such spouse for purposes of this chapter (or would be includible if such spouse were a citizen or resident of the United States), any benefit which is allowable (or would be allowable if such spouse were a citizen or resident of the United States) with respect to such property to the estate of such spouse under section 2014, 2032, 2032A, 2055, 2056, 2058, or 6166 shall be allowed for purposes of the tax imposed by paragraph (1)(B).

**(B) Section 303**

If the estate of the surviving spouse meets the requirements of section 303 with respect to any property described in subparagraph (A), for purposes of section 303, the tax imposed by paragraph (1)(B) with respect to such property shall be treated as a Federal estate tax payable with respect to the estate of the surviving spouse.

**(C) Section 6161(a)(2)**

The provisions of section 6161(a)(2) shall apply with respect to the tax imposed by paragraph (1)(B), and the reference in such section to the executor shall be treated as a reference to the trustees of the trust.

**(11) Special rule where distribution tax paid out of trust**

For purposes of this subsection, if any portion of the tax imposed by paragraph (1)(A) with respect to any distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a distribution described in paragraph (1)(A).

**(12) Special rule where spouse becomes citizen**

If the surviving spouse of the decedent becomes a citizen of the United States and if—



(A) such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States,

(B) no tax was imposed by paragraph (1)(A) with respect to any distribution before such spouse becomes such a citizen, or

(C) such spouse elects—

(i) to treat any distribution on which tax was imposed by paragraph (1)(A) as a taxable gift made by such spouse for purposes of—

(I) section 2001, and

(II) determining the amount of the tax imposed by section 2501 on actual taxable gifts made by such spouse during the year in which the spouse becomes a citizen or any subsequent year, and

(ii) to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a citizen or any subsequent year,

paragraph (1)(A) shall not apply to any distributions after such spouse becomes such a citizen (and paragraph (1)(B) shall not apply).

### (13) Coordination with section 1015

For purposes of section 1015, any distribution on which tax is imposed by paragraph (1)(A) shall be treated as a transfer by gift, and any tax paid under paragraph (1)(A) shall be treated as a gift tax.

### (14) Coordination with terminable interest rules

Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to pay the tax imposed by paragraph (1) on such distribution.

### (15) No tax on certain distributions

No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust.

## (c) Definitions

For purposes of this section—

### (1) Property includes interest therein

The term “property” includes an interest in property.

### (2) Income

Except as provided in regulations, the term “income” has the meaning given to such term by section 643(b).

## (3) Trust

To the extent provided in regulations prescribed by the Secretary, the term “trust” includes other arrangements which have substantially the same effect as a trust.

## (d) Election

An election under this section with respect to any trust shall be made by the executor on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable. No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

## (e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years.

(Added Pub. L. 100-647, title V, § 5033(a)(2), Nov. 10, 1988, 102 Stat. 3670; amended Pub. L. 101-239, title VII, § 7815(d)(7), (9)-(13), (15), Dec. 19, 1989, 103 Stat. 2415-2418; Pub. L. 101-508, title XI, §§ 11702(g)(2)(A), (B), (3)(A), (4), 11704(a)(15), Nov. 5, 1990, 104 Stat. 1388-515, 1388-516, 1388-518; Pub. L. 105-34, title XIII, §§ 1312(a), 1314(a), Aug. 5, 1997, 111 Stat. 1044, 1045; Pub. L. 107-16, title V, § 532(c)(6), June 7, 2001, 115 Stat. 74.)

## AMENDMENTS

2001—Subsec. (b)(10)(A). Pub. L. 107-16 struck out “2011,” before “2014,” and inserted “2058,” after “2056.”

1997—Subsec. (a)(1)(A). Pub. L. 105-34, § 1314(a), inserted “except as provided in regulations prescribed by the Secretary,” before “requires.”

Subsec. (c)(3). Pub. L. 105-34, § 1312(a), added par. (3).

1990—Subsec. (a)(1). Pub. L. 101-508, § 11702(g)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a trustee.”

Subsec. (b)(2)(B)(ii). Pub. L. 101-508, § 11704(a)(15), substituted “therefor” for “therefore” in concluding provisions.

Subsec. (b)(10)(A). Pub. L. 101-508, § 11702(g)(4), substituted “section 2011, 2014, 2032” for “section 2032”.

Subsec. (b)(14), (15). Pub. L. 101-508, § 11702(g)(2)(B), added pars. (14) and (15).

Subsec. (d). Pub. L. 101-508, § 11702(g)(3)(A), inserted at end “No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.”

1989—Subsec. (a)(1). Pub. L. 101-239, § 7815(d)(7)(A)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.”

Subsec. (a)(2) to (4). Pub. L. 101-239, § 7815(d)(7)(A)(ii), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “the surviving spouse of the decedent is entitled to all the income from the property in such trust, payable annually or at more frequent intervals.”

Subsec. (b)(1)(A). Pub. L. 101-239, § 7815(d)(7)(C), struck out “other than a distribution of income required under subsection (a)(2)” after “qualified domestic trust”.

Subsec. (b)(2)(B)(ii). Pub. L. 101-239, § 7815(d)(11), inserted “(with interest)” after “credit or refund”.

Subsec. (b)(2)(C). Pub. L. 101-239, § 7815(d)(12), added subpar. (C).

Subsec. (b)(3). Pub. L. 101-239, § 7815(d)(7)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101-239, § 7815(d)(7)(D), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “If any person other than an individual citizen of the United States or a domestic corporation becomes a trustee of a qualified domestic trust (or such trust ceases to meet the requirements of subsection (a)(3)), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date on which such person became such a trustee or the date of such cessation, as the case may be.”

Pub. L. 101-239, § 7815(d)(7)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 101-239, § 7815(d)(15), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The estate tax imposed by paragraph (1) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs.”

Pub. L. 101-239, § 7815(d)(7)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (9). Pub. L. 101-239, § 7815(d)(7)(B), redesignated pars. (5) to (8) as (6) to (9), respectively.

Subsec. (b)(10) to (13). Pub. L. 101-239, § 7815(d)(9), added pars. (10) to (13).

Subsec. (c)(2). Pub. L. 101-239, § 7815(d)(10), substituted “Except as provided in regulations, the term” for “The term”.

Subsec. (e). Pub. L. 101-239, § 7815(d)(13), added subsec. (e).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIII, § 1312(b), Aug. 5, 1997, 111 Stat. 1045, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-34, title XIII, § 1314(b), Aug. 5, 1997, 111 Stat. 1045, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11702(g)(2), (4) of Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

Pub. L. 101-508, title XI, § 11702(g)(3)(B), Nov. 5, 1990, 104 Stat. 1388-516, provided that: “The amendment made by subparagraph (A) [amending this section] shall not apply to any election made before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100-647, set

out as an Effective Date of 1988 Amendment note under section 2056 of this title.

#### TRANSITIONAL RULE

Pub. L. 105-34, title XIII, § 1303, Aug. 5, 1997, 111 Stat. 1039, provided that:

“(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990], such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990 [Pub. L. 101-508].”

#### APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB.

L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, this section shall not apply to the extent such section would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101-239, set out as a note under section 2056 of this title.

#### [§ 2057. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(97)(A), Dec. 19, 2014, 128 Stat. 4051]

Section, added Pub. L. 105-34, title V, § 502(a), Aug. 5, 1997, 111 Stat. 847, § 2033A; renumbered § 2057 and amended Pub. L. 105-206, title VI, § 6007(b)(1)(A)-(D), (2)-(7), July 22, 1998, 112 Stat. 807-809; Pub. L. 107-16, title V, § 521(d), June 7, 2001, 115 Stat. 72; Pub. L. 108-311, title II, § 207(23), Oct. 4, 2004, 118 Stat. 1178, related to deduction for qualified family-owned business interests of a decedent.

A prior section 2057, added Pub. L. 99-514, title XI, § 1172(a), Oct. 22, 1986, 100 Stat. 2513; amended Pub. L. 100-203, title X, §§ 10411(a), 10412(a), Dec. 22, 1987, 101 Stat. 1330-432, 1330-433; Pub. L. 100-647, title I, § 1011B(g)(3), Nov. 10, 1988, 102 Stat. 3490, related to sales of employer securities to employee stock ownership plans or worker-owned cooperatives, prior to repeal by Pub. L. 101-239, title VII, § 7304(a)(1), (3), Dec. 19, 1989, 103 Stat. 2352, 2353, applicable to estates of decedents dying after Dec. 19, 1989.

Another prior section 2057, added Pub. L. 94-455, title XX, § 2007(a), Oct. 4, 1976, 90 Stat. 1890; amended Pub. L. 95-600, title VII, § 702(l)(1), (2), Nov. 6, 1978, 92 Stat. 2934, 2935, related to bequests, etc., to certain minor children, prior to repeal by Pub. L. 97-34, title IV, § 427(a), (c), Aug. 13, 1981, 95 Stat. 3181, applicable to estates of decedents dying after Dec. 31, 1981.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

#### § 2058. State death taxes

##### (a) Allowance of deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be de-

terminated by deducting from the value of the gross estate the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

**(b) Period of limitations**

The deduction allowed by this section shall include only such taxes as were actually paid and deduction therefor claimed before the later of—

(1) 4 years after the filing of the return required by section 6018, or

(2) if—

(A) a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), the expiration of 60 days after the decision of the Tax Court becomes final,

(B) an extension of time has been granted under section 6161 or 6166 for payment of the tax shown on the return, or of a deficiency, the date of the expiration of the period of the extension, or

(C) a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, the latest of the expiration of—

(i) 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim,

(ii) 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, or

(iii) 2 years after a notice of the waiver of disallowance is filed under section 6532(a)(3).

Notwithstanding sections 6511 and 6512, refund based on the deduction may be made if the claim for refund is filed within the period provided in the preceding sentence. Any such refund shall be made without interest.

(Added Pub. L. 107-16, title V, §532(b), June 7, 2001, 115 Stat. 73.)

**EFFECTIVE DATE**

Section applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as an Effective Date of 2001 Amendment note under section 2012 of this title.

**Subchapter B—Estates of Nonresidents Not Citizens**

Sec.	
2101.	Tax imposed.
2102.	Credits against tax.
2103.	Definition of gross estate.
2104.	Property within the United States.
2105.	Property without the United States.
2106.	Taxable estate.
2107.	Expatriation to avoid tax.
2108.	Application of pre-1967 estate tax provisions.

**AMENDMENTS**

1966—Pub. L. 89-809, title I, §108(h), Nov. 13, 1966, 80 Stat. 1574, added items 2107 and 2108.

**§ 2101. Tax imposed**

**(a) Imposition**

Except as provided in section 2107, a tax is hereby imposed on the transfer of the taxable estate (determined as provided in section 2106) of every decedent nonresident not a citizen of the United States.

**(b) Computation of tax**

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under section 2001(c) on the sum of—

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) a tentative tax computed under section 2001(c) on the amount of the adjusted taxable gifts.

**(c) Adjustments for taxable gifts**

**(1) Adjusted taxable gifts defined**

For purposes of this section, the term “adjusted taxable gifts” means the total amount of the taxable gifts (within the meaning of section 2503 as modified by section 2511) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

**(2) Adjustment for certain gift tax**

For purposes of this section, the rules of section 2001(d) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, §108(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 94-455, title XX, §2001(c)(1)(D), Oct. 4, 1976, 90 Stat. 1850; Pub. L. 100-647, title V, §5032(a), (c), Nov. 10, 1988, 102 Stat. 3669; Pub. L. 101-239, title VII, §7815(c), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 103-66, title XIII, §13208(b)(3), Aug. 10, 1993, 107 Stat. 469; Pub. L. 107-147, title IV, §411(g)(2), Mar. 9, 2002, 116 Stat. 46.)

**AMENDMENTS**

2002—Subsec. (b). Pub. L. 107-147 struck out concluding provisions which read as follows: “For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(2) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010.”

1993—Subsec. (b). Pub. L. 103-66 substituted “section 2001(c)(2)” for “section 2001(c)(3)” in last sentence.

1989—Subsec. (b). Pub. L. 101-239 inserted at end “For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(3) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010.”

1988—Subsec. (b). Pub. L. 100-647, §5032(a), substituted “a tentative tax computed under section 2001(c)” for “a tentative tax computed in accordance with the rate schedule set forth in subsection (d)” in pars. (1) and (2).

Subsec. (d). Pub. L. 100-647, §5032(c), struck out subsec. (d) which provided a rate schedule.

1976—Pub. L. 94-455 redesignated existing provisions as (a) to (d), inserted provisions for adjustments for taxable gifts, revised the tax rate schedule, and struck out provisions relating to property held by Alien Property Custodian.

1966—Subsec. (a). Pub. L. 89-809 substituted table to be used in computing the tax imposed on transfer of taxable estate, determined as provided in section 2106,

of every decedent nonresident not a citizen of the United States for provisions sending taxpayer to table in section 2001 for computation of tax imposed.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable in the case of decedents dying and gifts made after Dec. 31, 1992, see section 13208(c) of Pub. L. 103-66, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title V, §5032(d), Nov. 10, 1988, 102 Stat. 3670, provided that: “The amendments made by this section [amending this section and section 2102 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §108(i), Nov. 13, 1966, 80 Stat. 1574, provided that: “The amendments made by this section [amending this section and sections 2102, 2104, 2105, 2106, and 6018 of this title and enacting sections 2107 and 2108 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Nov. 13, 1966].”

### § 2102. Credits against tax

#### (a) In general

The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2012 and 2013 (relating to gift tax and tax on prior transfers).

#### (b) Unified credit

##### (1) In general

A credit of \$13,000 shall be allowed against the tax imposed by section 2101.

##### (2) Residents of possessions of the United States

In the case of a decedent who is considered to be a “nonresident not a citizen of the United States” under section 2209, the credit under this subsection shall be the greater of—

(A) \$13,000, or

(B) that proportion of \$46,800 which the value of that part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

#### (3) Special rules

##### (A) Coordination with treaties

To the extent required under any treaty obligation of the United States, the credit

allowed under this subsection shall be equal to the amount which bears the same ratio to the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death as the value of the part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.

##### (B) Coordination with gift tax unified credit

If a credit has been allowed under section 2505 with respect to any gift made by the decedent, each dollar amount contained in paragraph (1) or (2) or subparagraph (A) of this paragraph (whichever applies) shall be reduced by the amount so allowed.

#### (4) Limitation based on amount of tax

The credit allowed under this subsection shall not exceed the amount of the tax imposed by section 2101.

#### (5) Application of other credits

For purposes of subsection (a), sections 2012 and 2013 shall be applied as if the credit allowed under this subsection were allowed under section 2010.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, §108(b), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 94-455, title XX, §2001(c)(1)(E)(i), Oct. 4, 1976, 90 Stat. 1851; Pub. L. 100-647, title V, §5032(b), Nov. 10, 1988, 102 Stat. 3669; Pub. L. 104-188, title I, §1704(f)(1), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 105-34, title V, §501(a)(1)(E), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107-16, title V, §532(c)(7), June 7, 2001, 115 Stat. 75.)

#### AMENDMENTS

2001—Subsec. (a). Pub. L. 107-16, §532(c)(7)(A), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2011 to 2013, inclusive (relating to State death taxes, gift tax, and tax on prior transfers), subject to the special limitation provided in subsection (b).”

Subsec. (b). Pub. L. 107-16, §532(c)(7)(B), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “The maximum credit allowed under section 2011 against the tax imposed by section 2101 for State death taxes paid shall be an amount which bears the same ratio to the credit computed as provided in section 2011(b) as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this subsection, the term ‘State death taxes’ means the taxes described in section 2011(a).”

Subsec. (b)(5). Pub. L. 107-16, §532(c)(7)(C), substituted “2012 and 2013” for “2011 to 2013, inclusive.”

Subsec. (c). Pub. L. 107-16, §532(c)(7)(B), redesignated subsec. (c) as (b).

1997—Subsec. (c)(3)(A). Pub. L. 105-34 substituted “the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death” for “\$192,800”.

1996—Subsec. (c)(3)(A). Pub. L. 104-188 inserted at end “For purposes of the preceding sentence, property shall

not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.”

1988—Subsec. (c)(1). Pub. L. 100-647, § 5032(b)(1)(A), substituted “\$13,000” for “\$3,600”.

Subsec. (c)(2). Pub. L. 100-647, § 5032(b)(1), substituted “\$13,000” for “\$3,600” in subpar. (A) and “\$46,800” for “\$15,075” in subpar. (B).

Subsec. (c)(3). Pub. L. 100-647, § 5032(b)(2), amended par. (3) generally, substituting provision relating to special rules for coordination with treaties and with gift tax unified tax credit for provision relating to a phase-in of the par. (2)(B) amount for decedents dying during 1977, 1978, 1979, and 1980.

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1966—Pub. L. 89-809 redesignated existing provisions as subsec. (a), inserted reference to special limitation provided in subsec. (b), and added subsec. (b).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to estates of decedents dying after Nov. 10, 1988, see section 5032(d) of Pub. L. 100-647, set out as a note under section 2101 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

### § 2103. Definition of gross estate

For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2031) which at the time of his death is situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 397.)

### § 2104. Property within the United States

#### (a) Stock in corporation

For purposes of this subchapter shares of stock owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

#### (b) Revocable transfers and transfers within 3 years of death

For purposes of this subchapter, any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, shall be deemed to

be situated in the United States, if so situated either at the time of the transfer or at the time of the decedent's death.

#### (c) Debt obligations

For purposes of this subchapter, debt obligations of—

(1) a United States person, or

(2) the United States, a State or any political subdivision thereof, or the District of Columbia,

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. Deposits with a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, § 108(c), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91-172, title IV, § 435(b), Dec. 30, 1969, 83 Stat. 625; Pub. L. 93-17, § 3(a)(1), Apr. 10, 1973, 87 Stat. 12; Pub. L. 93-625, § 9(b), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94-455, title XX, § 2001(c)(1)(L), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 100-647, title I, § 1012(q)(11), Nov. 10, 1988, 102 Stat. 3525; Pub. L. 104-188, title I, § 1704(t)(38), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 111-226, title II, § 217(c)(3), Aug. 10, 2010, 124 Stat. 2402; Pub. L. 113-295, div. A, title II, § 221(a)(98), Dec. 19, 2014, 128 Stat. 4051.)

#### AMENDMENTS

2014—Subsec. (c). Pub. L. 113-295 substituted “Deposits” for “With respect to estates of decedents dying after December 31, 1969, deposits” in concluding provisions.

2010—Subsec. (c). Pub. L. 111-226, in concluding provisions, struck out before period at end “or to a debt obligation of a domestic corporation if any interest on such obligation, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States”.

1996—Subsec. (c). Pub. L. 104-188 substituted “section 861(a)(1)(A)” for “subparagraph (A), (C), or (D) of section 861(a)(1)” in concluding provisions.

1988—Subsec. (c). Pub. L. 100-647 substituted “subparagraph (A), (C), or (D) of section 861(a)(1)” for “section 861(a)(1)(B), section 861(a)(1)(G), or section 861(a)(1)(H)”.

1976—Subsec. (b). Pub. L. 94-455 substituted “and transfers within 3 years of death” for “and transfers in contemplation of death” after “Revocable transfers”.

1975—Subsec. (c). Pub. L. 93-625 inserted reference to section 861(a)(1)(H) of this title in last sentence.

1973—Subsec. (c). Pub. L. 93-17 made subsec. (c) inapplicable to debt obligations where interest on such obligations is treated as income from sources without the United States by reason of section 861(a)(1)(G) of this title.

1969—Subsec. (c). Pub. L. 91-172 substituted “December 31, 1969” for “December 31, 1972” in provisions deeming deposit with a domestic branch of a foreign corporation if such branch is engaged in the commercial banking business to be property within the United States.

1966—Subsec. (c). Pub. L. 89-809 added subsec. (c).

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111-226, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 not applicable to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-625 applicable with respect to estates of decedents dying after Jan. 3, 1975, see section 9(c) of Pub. L. 93-625, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-17, §3(a)(2), Apr. 10, 1973, 87 Stat. 12, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1972, except that in the case of the assumption of a debt obligation of a foreign corporation which is treated as issued under section 4912(c)(2) after December 31, 1972, and before January 1, 1974, the amendment made by paragraph (1) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1973."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-17, §1(a), Apr. 10, 1973, 87 Stat. 12, provided that: "This Act [enacting sections 4922 and 6689 of this title, amending this section and sections 4911, 4912, 4914, 4915, 4916, 4918, 4919, 4920, and 6611 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Interest Equalization Tax Extension Act of 1973'."

**§ 2105. Property without the United States**

**(a) Proceeds of life insurance**

For purposes of this subchapter, the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.

**(b) Bank deposits and certain other debt obligations**

For purposes of this subchapter, the following shall not be deemed property within the United States—

- (1) amounts described in section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1) were such interest received by the decedent at the time of his death,
- (2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business,

(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(5) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death, and

(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States.

Notwithstanding the preceding sentence, if any portion of the interest on an obligation referred to in paragraph (3) would not be eligible for the exemption referred to in paragraph (3) by reason of section 871(h)(4) if the interest were received by the decedent at the time of his death, then an appropriate portion (as determined in a manner prescribed by the Secretary) of the value (as determined for purposes of this chapter) of such debt obligation shall be deemed property within the United States.

**(c) Works of art on loan for exhibition**

For purposes of this subchapter, works of art owned by a nonresident not a citizen of the United States shall not be deemed property within the United States if such works of art are—

- (1) imported into the United States solely for exhibition purposes,
- (2) loaned for such purposes, to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and
- (3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

**(d) Stock in a RIC**

**(1) In general**

For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

**(2) Qualifying assets**

For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

- (A) amounts, deposits, or debt obligations described in subsection (b) of this section,
- (B) debt obligations described in the last sentence of section 2104(c), or
- (C) other property not within the United States.

**(3) Termination**

This subsection shall not apply to estates of decedents dying after December 31, 2011.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, §108(d), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 98-369, div. A, title I, §127(d), July 18, 1984, 98 Stat. 651; Pub. L. 100-647, title I, §1012(g)(4), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, §13237(b), Aug. 10, 1993, 107 Stat. 508; Pub. L. 105-34, title XIII, §1304(a), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 108-357, title IV, §411(b), Oct. 22, 2004, 118 Stat. 1504; Pub. L. 110-343, div. C, title II, §207(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111-312, title VII, §726(a), Dec. 17, 2010, 124 Stat. 3316.)

#### AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (d)(3). Pub. L. 110-343 substituted “December 31, 2009” for “December 31, 2007”.

2004—Subsec. (d). Pub. L. 108-357 added subsec. (d).

1997—Subsec. (b)(4). Pub. L. 105-34 added par. (4).

1993—Subsec. (b). Pub. L. 103-66 substituted “this subchapter, the following shall not be deemed property within the United States” for “this subchapter” in introductory provisions, added par. (3) and concluding provisions, and struck out former par. (3) and concluding provisions which read as follows:

“(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(4) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death, shall not be deemed property within the United States.”

1988—Subsec. (b)(1). Pub. L. 100-647 substituted “section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)” for “section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States”.

1984—Subsec. (b). Pub. L. 98-369, amended subsec. (b) generally, substituting “Bank deposits and certain other debt obligations” for “Certain bank deposits, etc.” in heading and “, if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death,” for “if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and” in par. (1), inserting “and” after “business,” in par. (2), and adding par. (3).

1966—Subsec. (b). Pub. L. 89-809 substituted amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business for moneys deposited with any person carrying on the banking business by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death as the property not to be deemed property within the United States for purposes of this subchapter.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §726(b), Dec. 17, 2010, 124 Stat. 3317, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2009.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title II, §207(b), Oct. 3, 2008, 122 Stat. 3865, provided that: “The amendment made by this section [amending this section] shall apply to decedents dying after December 31, 2007.”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to estates of decedents dying after Dec. 31, 2004, see section 411(d)(2) of Pub. L. 108-357, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIII, §1304(b), Aug. 5, 1997, 111 Stat. 1040, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to the estates of decedents dying after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after July 18, 1984, with respect to the estates of decedents dying after such date, see section 127(g)(2) of Pub. L. 98-369, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

### § 2106. Taxable estate

#### (a) Definition of taxable estate

For purposes of the tax imposed by section 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

##### (1) Expenses, losses, indebtedness, and taxes

That proportion of the deductions specified in sections 2053 and 2054 (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 2053 in the case of a claim against the estate which was founded on a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (2) if such promise or agreement constituted a bequest.

##### (2) Transfers for public, charitable, and religious uses

###### (A) In general

The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, de-

wise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(i) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(ii) to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; or

(iii) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

#### (B) Powers of appointment

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this paragraph shall, for purposes of this paragraph, be considered a bequest of such decedent.

#### (C) Death taxes payable out of bequests

If the tax imposed by section 2101, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

#### (D) Limitation on deduction

The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

#### (E) Disallowance of deductions in certain cases

The provisions of section 2055(e) shall be applied in the determination of the amount allowable as a deduction under this paragraph.

#### (F) Cross references

(i) For option as to time for valuation for purposes of deduction under this section, see section 2032.

(ii) For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(g).

(iii) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

#### (3) Marital deduction

The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056.

#### (4) State death taxes

The amount which bears the same ratio to the State death taxes as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this paragraph, the term "State death taxes" means the taxes described in 2058(a).<sup>1</sup>

#### (b) Condition of allowance of deductions

No deduction shall be allowed under paragraphs (1) and (2) of subsection (a) in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 6018 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 398; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 86-779, §4(c), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89-809, title I, §108(e), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91-172, title II, §201(d)(2), (4)(B), Dec. 30, 1969, 83 Stat. 561; Pub. L. 94-455, title XIII, §1307(d)(1)(B)(iii), (C), title XIX, §1902(a)(5), (12)(A), title XX, §2001(c)(1)(F), Oct. 4, 1976, 90 Stat. 1727, 1805, 1852; Pub. L. 97-473, title II, §202(b)(6), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 99-514, title XIV, §1422(c), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, §10711(a)(4), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 100-647, title V, §5033(c), Nov. 10, 1988, 102 Stat. 3672; Pub. L. 101-239, title VII, §7815(d)(3), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 107-16, title V, §532(c)(8), June 7, 2001, 115 Stat. 75; Pub. L. 113-295, div. A, title II, §221(a)(95)(A)(ii), Dec. 19, 2014, 128 Stat. 4051.)

#### AMENDMENTS

2014—Subsec. (a)(4). Pub. L. 113-295 substituted "2058(a)" for "section 2011(a)".

2001—Subsec. (a)(4). Pub. L. 107-16 added par. (4).

1989—Subsec. (a)(3). Pub. L. 101-239 struck out "allowed where spouse is citizen" after "deduction" in heading.

<sup>1</sup> So in original. Probably should be preceded by "section".



1988—Subsec. (a)(3). Pub. L. 100-647 added par. (3).  
 1987—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsec. (a)(2)(F)(ii). Pub. L. 99-514 substituted “section 2055(g)” for “section 2055(f)”.

1983—Subsec. (a)(2)(F). Pub. L. 97-473 substituted “(i)” and “(ii)” for “(1)” and “(2)”, respectively, and added cl. (iii).

1976—Subsec. (a)(2)(A)(i). Pub. L. 94-455, § 1902(a)(12)(A), struck out “Territory” after “any State”.

Subsec. (a)(2)(A)(ii). Pub. L. 94-455, § 1307(d)(1)(B)(iii), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “stockholder or individual”.

Subsec. (a)(2)(A)(iii). Pub. L. 94-455, § 1307(d)(1)(C), substituted “such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation” after “children or animals”.

Subsec. (a)(2)(F). Pub. L. 94-455, § 1902(a)(5)(A), substituted “Cross references” for “Other cross references” after “(F)”, in cl. (1) “purposes of deduction under this section” for “purpose of deduction under this paragraph” after “valuation for”, in cl. (2) provision for exemption of certain bequests for benefit of United States and for rules of construction for certain bequests, for provisions of cls. (2) to (11) relating to bequests to; Library of Congress, Post Office Department, Office of Naval Records and Library, National Park Service, Department of State, Department of Justice, payment of tax on bequests of United States obligations, Naval Academy, Naval Academy Museum, and National Archives Trust Fund Board, respectively.

Subsec. (a)(3). Pub. L. 94-455, § 2001(c)(1)(F), struck out par. (3) relating to specific exemption in case of decedents nonresidents not citizens.

Subsec. (c). Pub. L. 94-455, § 1902(a)(5)(B), struck out subsec. (c) relating to treatment of United States bonds in determining gross estate of a decedent who was not engaged in business in the United States at the time of his death.

1969—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 91-172, § 201(d)(4)(B), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(2)(E). Pub. L. 91-172, § 201(d)(2), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1966—Subsec. (a)(3). Pub. L. 89-809 substituted “\$30,000” for “\$2,000” as size of exemption in subpar. (A) and “\$30,000” for “\$2,000” as item (i) in formula set out in subpar. (B).

1960—Subsec. (a)(3). Pub. L. 86-779 designated existing provisions as subpar. (A) and added subpar. (B).

1958—Subsec. (a)(2)(E). Pub. L. 85-866 substituted “503” for “504”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of

the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100-647, set out as a note under section 2056 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99-514, set out as a note under section 2055 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(5), (12)(A) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Amendment by section 2001(c)(1)(F) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(2) of Pub. L. 91-172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(B) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-779, § 4(e)(2), Sept. 14, 1960, 74 Stat. 1000, provided that: “The amendments made by subsections (b) and (c) [enacting section 2209 of this title and amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Sept. 14, 1960].”

#### APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100-647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec.

19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101-239, set out as a note under section 2056 of this title.

## **§ 2107. Expatriation to avoid tax**

### **(a) Treatment of expatriates**

A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent non-resident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).

### **(b) Gross estate**

For purposes of the tax imposed by subsection (a), the value of the gross estate of every decedent to whom subsection (a) applies shall be determined as provided in section 2103, except that—

(1) if such decedent owned (within the meaning of section 958(a)) at the time of his death 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

(2) if such decedent owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of his death, more than 50 percent of—

(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(B) the total value of the stock of such corporation,

then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death, shall be included in the gross estate of such decedent. For purposes of the preceding sentence, a decedent shall be treated as owning stock of a foreign corporation at the time of his death if, at the time of a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

### **(c) Credits**

#### **(1) Unified credit**

##### **(A) In general**

A credit of \$13,000 shall be allowed against the tax imposed by subsection (a).

##### **(B) Limitation based on amount of tax**

The credit allowed under this paragraph shall not exceed the amount of the tax imposed by subsection (a).

#### **(2) Credit for foreign death taxes**

##### **(A) In general**

The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actu-

ally paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

### **(B) Limitation on credit**

The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country as the value of the property subjected to such taxes by such foreign country and included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

(ii) such property's proportionate share of the excess of—

(I) the tax imposed by subsection (a), over

(II) the tax which would be imposed by section 2101 but for this section.

### **(C) Proportionate share**

In the case of property which is included in the gross estate solely by reason of subsection (b), such property's proportionate share is the percentage which the value of such property bears to the total value of all property included in the gross estate solely by reason of subsection (b).

### **(3) Other credits**

The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with subsections (a) and (b) of section 2102. For purposes of subsection (a) of section 2102, sections 2012 and 2013 shall be applied as if the credit allowed under paragraph (1) were allowed under section 2010.

### **(d) Burden of proof**

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction in the estate, inheritance, legacy, and succession taxes in respect of the transfer of his estate, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on the executor of such individual's estate.

### **(e) Cross reference**

**For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).**

(Added Pub. L. 89-809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94-455, title XIX, §§1902(a)(6), 1906(b)(13)(A), title XX, §2001(c)(1)(E)(ii), Oct. 4, 1976, 90 Stat. 1805, 1834, 1851; Pub. L. 104-191, title V, §511(e)(1), (f)(2)(A), Aug. 21, 1996, 110 Stat. 2097, 2099; Pub. L. 105-34, title XVI, §1602(g)(6), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 107-16, title V, §532(c)(7)(C), June 7, 2001, 115 Stat. 75; Pub. L. 108-357, title VIII, §804(a)(3), Oct. 22, 2004, 118 Stat. 1570.)

#### **AMENDMENTS**

2004—Subsec. (a). Pub. L. 108-357 reenacted heading without change and amended text of subsec. (a) gener-

ally, substituting provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b), for provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes, and provisions describing individuals to be treated as having a principal purpose to avoid taxes.

2001—Subsec. (c)(3). Pub. L. 107-16 substituted “2012 and 2013” for “2011 to 2013, inclusive.”

1997—Subsec. (c)(2)(B)(i). Pub. L. 105-34, § 1602(g)(6)(A), substituted “such foreign country as the value of the property subjected to such taxes by such foreign country and” for “such foreign country in respect of property included in the gross estate as the value of the property”.

Subsec. (c)(2)(C). Pub. L. 105-34, § 1602(g)(6)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “For purposes of subparagraph (B), a property’s proportionate share is the percentage of the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate.”

1996—Subsec. (a). Pub. L. 104-191, § 511(e)(1)(A), substituted “Treatment of expatriates” for “Rate of tax” in heading and amended text generally. Prior to amendment, text read as follows: “A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after November 13, 1966, if after March 8, 1965, and within the 10-year period ending with the date of death such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.”

Subsec. (b)(2). Pub. L. 104-191, § 511(e)(1)(C), substituted “more than 50 percent of—” for “more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation,” and added subpars. (A) and (B).

Subsec. (c)(2), (3). Pub. L. 104-191, § 511(e)(1)(B), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 104-191, § 511(f)(2)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

“(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to the transfer of the estate of a decedent whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).”

Subsec. (e). Pub. L. 104-191, § 511(f)(2)(A), added subsec. (e). Former subsec. (e) redesignated (d).

1976—Subsec. (a). Pub. L. 94-455, § 1902(a)(6), substituted “November 13, 1966” for “the date of enactment of this section” after “dying after”.

Subsec. (c). Pub. L. 94-455, § 2001(c)(1)(E)(ii), substituted provisions relating to unified credit for “The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with section 2102.”

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

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers,

after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)-(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104-191, set out as a note under section 877 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Amendment by section 2001(c)(1)(E)(ii) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 2101 of this title.

### § 2108. Application of pre-1967 estate tax provisions

#### (a) Imposition of more burdensome tax by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, a more burdensome tax is imposed by such foreign country on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such tax so that it is no more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with this section to the transfer of estates of decedents who were residents of such foreign country,

the President shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to amendments made to sections 2101 (relating to tax imposed), 2102 (relating to credits against tax), 2106 (relating to taxable estate), and 6018

(relating to estate tax returns) on or after November 13, 1966.

**(b) Alleviation of more burdensome tax**

Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that the tax on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country is no longer more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, he shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to subsection (a).

**(c) Notification of Congress required**

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

**(d) Implementation by regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to implement this section.

(Added Pub. L. 89-809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94-455, title XIX, §§1902(a)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, §1902(a)(6), substituted “November 13, 1976” for “the date of enactment of this section” after “on or after”.

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

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 2101 of this title.

**Subchapter C—Miscellaneous**

Sec.	
2201.	Combat zone-related deaths of members of the Armed Forces, deaths of astronauts, and deaths of victims of certain terrorist attacks.
[2202.	Repealed.]
2203.	Definition of executor.
2204.	Discharge of fiduciary from personal liability.
2205.	Reimbursement out of estate.
2206.	Liability of life insurance beneficiaries.
2207.	Liability of recipient of property over which decedent had power of appointment.
2207A.	Right of recovery in the case of certain marital deduction property.
2207B.	Right of recovery where decedent retained interest.
2208.	Certain residents of possessions considered citizens of the United States.

Sec.

2209. Certain residents of possessions considered nonresidents not citizens of the United States.

[2210. Repealed.]

AMENDMENTS

2010—Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107-16, §501(c)(1), had never been enacted. See 2001 Amendment note below.

2003—Pub. L. 108-121, title I, §110(c)(2)(B), Nov. 11, 2003, 117 Stat. 1342, inserted “, deaths of astronauts,” after “Forces” in item 2201.

2002—Pub. L. 107-134, title I, §103(c), Jan. 23, 2002, 115 Stat. 2431, substituted “Combat zone-related deaths of members of the Armed Forces and deaths of victims of certain terrorist attacks.” for “Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.” in item 2201.

2001—Pub. L. 107-16, title V, §501(c)(1), June 7, 2001, 115 Stat. 69, added item 2210 “Termination”.

1989—Pub. L. 101-239, title VII, §7304(b)(2)(C), Dec. 19, 1989, 103 Stat. 2353, struck out item 2210 “Liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative”.

1988—Pub. L. 100-647, title III, §3031(f)(2), Nov. 10, 1988, 102 Stat. 3638, added item 2207B.

1984—Pub. L. 98-369, div. A, title V, §544(b)(2), July 18, 1984, 98 Stat. 894, added item 2210.

1981—Pub. L. 97-34, title IV, §403(d)(4)(B), Aug. 13, 1981, 95 Stat. 305, added item 2207A.

1976—Pub. L. 94-455, title XIX, §1902(b)(1), Oct. 4, 1976, 90 Stat. 1806, struck out item 2202 “Missionaries in foreign service”.

1975—Pub. L. 93-597, §6(b)(3), Jan. 2, 1975, 88 Stat. 1953, substituted “Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.” for “Members of the Armed Forces dying during an induction period.” in item 2201.

1970—Pub. L. 91-614, title I, §101(d)(3), Dec. 31, 1970, 84 Stat. 1837, substituted “Discharge of fiduciary from personal liability” for “Discharge of executor from personal liability” in item 2204.

1960—Pub. L. 86-779, §4(b)(2), Sept. 14, 1960, 74 Stat. 1000, added item 2209.

1958—Pub. L. 85-866, title I, §102(c)(4), Sept. 2, 1958, 72 Stat. 1675, added item 2208.

**§ 2201. Combat zone-related deaths of members of the Armed Forces, deaths of astronauts, and deaths of victims of certain terrorist attacks**

**(a) In general**

Unless the executor elects not to have this section apply, in applying sections 2001 and 2101 to the estate of a qualified decedent, the rate schedule set forth in subsection (c) shall be deemed to be the rate schedule set forth in section 2001(c).

**(b) Qualified decedent**

For purposes of this section, the term “qualified decedent” means—

(1) any citizen or resident of the United States dying while in active service of the Armed Forces of the United States, if such decedent—

(A) was killed in action while serving in a combat zone, as determined under section 112(c), or

(B) died as a result of wounds, disease, or injury suffered while serving in a combat zone (as determined under section 112(c)), and while in the line of duty, by reason of a

hazard to which such decedent was subjected as an incident of such service,

(2) any specified terrorist victim (as defined in section 692(d)(4)), and

(3) any astronaut whose death occurs in the line of duty.

**(c) Rate schedule**

**If the amount with respect to which the tentative tax to be computed is:**

**The tentative tax is:**

Not over \$150,000 .....	1 percent of the amount by which such amount exceeds \$100,000.
Over \$150,000 but not over \$200,000.	\$500 plus 2 percent of the excess over \$150,000.
Over \$200,000 but not over \$300,000.	\$1,500 plus 3 percent of the excess over \$200,000.
Over \$300,000 but not over \$500,000.	\$4,500 plus 4 percent of the excess over \$300,000.
Over \$500,000 but not over \$700,000.	\$12,500 plus 5 percent of the excess over \$500,000.
Over \$700,000 but not over \$900,000.	\$22,500 plus 6 percent of the excess over \$700,000.
Over \$900,000 but not over \$1,100,000.	\$34,500 plus 7 percent of the excess over \$900,000.
Over \$1,100,000 but not over \$1,600,000.	\$48,500 plus 8 percent of the excess over \$1,100,000.
Over \$1,600,000 but not over \$2,100,000.	\$88,500 plus 9 percent of the excess over \$1,600,000.
Over \$2,100,000 but not over \$2,600,000.	\$133,500 plus 10 percent of the excess over \$2,100,000.
Over \$2,600,000 but not over \$3,100,000.	\$183,500 plus 11 percent of the excess over \$2,600,000.
Over \$3,100,000 but not over \$3,600,000.	\$238,500 plus 12 percent of the excess over \$3,100,000.
Over \$3,600,000 but not over \$4,100,000.	\$298,500 plus 13 percent of the excess over \$3,600,000.
Over \$4,100,000 but not over \$5,100,000.	\$363,500 plus 14 percent of the excess over \$4,100,000.
Over \$5,100,000 but not over \$6,100,000.	\$503,500 plus 15 percent of the excess over \$5,100,000.
Over \$6,100,000 but not over \$7,100,000.	\$653,500 plus 16 percent of the excess over \$6,100,000.
Over \$7,100,000 but not over \$8,100,000.	\$813,500 plus 17 percent of the excess over \$7,100,000.
Over \$8,100,000 but not over \$9,100,000.	\$983,500 plus 18 percent of the excess over \$8,100,000.
Over \$9,100,000 but not over \$10,100,000.	\$1,163,500 plus 19 percent of the excess over \$9,100,000.
Over \$10,100,000 .....	\$1,353,500 plus 20 percent of the excess over \$10,100,000.

**(d) Determination of unified credit**

In the case of an estate to which this section applies, subsection (a) shall not apply in determining the credit under section 2010.

(Aug. 16, 1954, ch. 736, 68A Stat. 401; Pub. L. 93-597, § 6(b)(1), (2), Jan. 2, 1975, 88 Stat. 1953; Pub. L. 94-455, title XIX, § 1902(a)(7)(A), Oct. 4, 1976, 90 Stat. 1805; Pub. L. 107-16, title V, § 532(c)(9), June 7, 2001, 115 Stat. 75; Pub. L. 107-134, title I, § 103(a), (b)(3), Jan. 23, 2002, 115 Stat. 2430, 2431; Pub. L. 108-121, title I, § 110(c)(1), (2)(A), Nov. 11, 2003, 117 Stat. 1342.)

**AMENDMENTS**

2003—Pub. L. 108-121, § 110(c)(2)(A), inserted “, deaths of astronauts,” after “Forces” in section catchline.

Subsec. (b)(3). Pub. L. 108-121, § 110(c)(1), added par. (3).

2002—Pub. L. 107-134 amended section catchline and text of section generally, substituting present provisions for provisions which had stated that the additional estate tax as defined in former section 2011(d)

should not apply to the transfer of the taxable estate of a citizen or resident of the United States dying while in active service as a member of the Armed Forces of the United States, if such decedent was killed in action while serving in a combat zone, as determined under section 112(c), or died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 112(c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

2001—Pub. L. 107-16, § 532(c)(9)(B), which added concluding provisions which read as follows: “For purposes of this section, the additional estate tax is the difference between the tax imposed by section 2001 or 2101 and the amount equal to 125 percent of the maximum credit provided by section 2011(b), as in effect before its repeal by the Economic Growth and Tax Relief Reconciliation Act of 2001.”, was repealed by Pub. L. 107-134, § 103(b)(3). See Effective Date of 2002 Amendment note below.

Pub. L. 107-16, § 532(c)(9)(A), which struck out “as defined in section 2011(d)” after “The additional estate tax” in introductory provisions, was repealed by Pub. L. 107-134, § 103(b)(3). See Effective Date of 2002 Amendment note below.

1975—Pub. L. 93-597, as amended by Pub. L. 94-455, § 1902(a)(7)(A), struck out “during an induction period (as defined in section 112(c)(5))” after “resident of the United States dying”, and substituted “Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.” for “Members of the Armed Forces dying during an induction period” in section catchline.

**EFFECTIVE DATE OF 2003 AMENDMENT**

Pub. L. 108-121, title I, § 110(c)(3), Nov. 11, 2003, 117 Stat. 1343, provided that: “The amendments made by this subsection [amending this section] shall apply to estates of decedents dying after December 31, 2002.”

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107-134 applicable to estates of decedents dying on or after Sept. 11, 2001, and, in the case of individuals dying as a result of the Apr. 19, 1995, terrorist attack, dying on or after Apr. 19, 1995, with provisions relating to waiver of limitations, see section 103(d) of Pub. L. 107-134, set out as a note under section 2053 of this title.

**EFFECTIVE DATE OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Pub. L. 94-455, title XIX, § 1902(a)(7)(B), Oct. 4, 1976, 90 Stat. 1805, provided that: “The amendment made by subsection (A) [amending section 6(b)(1) of Pub. L. 93-597] is effective July 1, 1973.”

**EFFECTIVE DATE OF 1975 AMENDMENT**

Pub. L. 93-597, § 6(c), Jan. 2, 1975, 88 Stat. 1953, provided that: “The amendments made by this section [amending this section and section 1034 of this title] shall take effect on July 1, 1973.”

**[§ 2202. Repealed. Pub. L. 94-455, title XIX, § 1902(a)(8), Oct. 4, 1976, 90 Stat. 1805]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 401; June 25, 1959, Pub. L. 86-70, § 22(a), 73 Stat. 146; July 12, 1960, Pub. L. 86-624, § 18(b), 74 Stat. 416, related to the presumption that missionaries duly commissioned and serving under boards of foreign missions are residents of the State or the District of Columbia wherein they resided at the time of their commission and departure for service.

## EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2012 of this title.

**§ 2203. Definition of executor**

The term “executor” wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 401.)

**§ 2204. Discharge of fiduciary from personal liability****(a) General rule**

If the executor makes written application to the Secretary for determination of the amount of the tax and discharge from personal liability therefor, the Secretary (as soon as possible, and in any event within 9 months after the making of such application, or, if the application is made before the return is filed, then within 9 months after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 6501) shall notify the executor of the amount of the tax. The executor, on payment of the amount of which he is notified (other than any amount the time for payment of which is extended under sections 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment is extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

**(b) Fiduciary other than the executor**

If a fiduciary (not including a fiduciary in respect of the estate of a nonresident decedent) other than the executor makes written application to the Secretary for determination of the amount of any estate tax for which the fiduciary may be personally liable, and for discharge from personal liability therefor, the Secretary upon the discharge of the executor from personal liability under subsection (a), or upon the expiration of 6 months after the making of such application by the fiduciary, if later, shall notify the fiduciary (1) of the amount of such tax for which it has been determined the fiduciary is liable, or (2) that it has been determined that the fiduciary is not liable for any such tax. Such application shall be accompanied by a copy of the instrument, if any, under which such fiduciary is acting, a description of the property held by the fiduciary, and such other information for purposes of carrying out the provisions of this section as the Secretary may require by regulations. On payment of the amount of such tax for which it has been determined the fiduciary is liable (other than any amount the time for payment of which has been extended under section 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which

the time for payment has been extended, or on receipt by him of notification of a determination that he is not liable for any such tax, the fiduciary shall be discharged from personal liability for any deficiency in such tax thereafter found to be due and shall be entitled to a receipt or writing evidencing such discharge.

**(c) Special lien under section 6324A**

For purposes of the second sentence of subsection (a) and the last sentence of subsection (b), an agreement which meets the requirements of section 6324A (relating to special lien for estate tax deferred under section 6166) shall be treated as the furnishing of bond with respect to the amount for which the time for payment has been extended under section 6166.

**(d) Good faith reliance on gift tax returns**

If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

- (1) are made more than 3 years before the date of the decedent's death, and
- (2) are not shown on such returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 401; Pub. L. 91-614, title I, § 101(d)(1), (f), Dec. 31, 1970, 84 Stat. 1836, 1838; Pub. L. 94-455, title XIX, §§ 1902(a)(9), 1906(b)(13)(A), title XX, § 2004(d)(2), (f)(4), (6), Oct. 4, 1976, 90 Stat. 1805, 1834, 1870, 1872; Pub. L. 95-600, title VII, § 702(p)(1), Nov. 6, 1978, 92 Stat. 2937; Pub. L. 97-34, title IV, § 422(e)(1), (3), Aug. 13, 1981, 95 Stat. 316.)

## AMENDMENTS

1981—Subsecs. (a) to (c). Pub. L. 97-34, § 422(e)(1), (3), struck out reference to section 6166A in subsecs. (a) and (b), and two such references in subsec. (c).

1978—Subsec. (d). Pub. L. 95-600 added subsec. (d).

1976—Subsec. (a). Pub. L. 94-455, §§ 1906(b)(13)(A), 2004(f)(6), substituted “6166 or 6166A” for “or 6166” after “6161, 6163” and struck out “or his delegate” in two places after “Secretary”.

Subsec. (b). Pub. L. 94-455, §§ 1902(a)(9), 1906(b)(13)(A), 2004(f)(4), (6), substituted “6166 or 6166A” for “or 6166” after “6161, 6163”, “has been” for “has not been” after “payment of which”, and struck out “or his delegate” after “Secretary”.

Subsec. (c). Pub. L. 94-455, § 2004(d)(2), added subsec. (c).

1970—Pub. L. 91-614, § 101(d)(1)(A), substituted “fiduciary” for “executor” in section catchline.

Subsec. (a). Pub. L. 91-614, §§ 101(d)(1)(B), (C), (f), designated existing provisions as subsec. (a), inserted “General Rule—” immediately preceding first sentence and permitted a discharge of the executor even where an extension of time has been granted under sections 6161, 6163, or 6166 of this title, where a bond, if required, is provided to assure payment of taxes for which the extension was granted, and substituted “9 months” for “1 year” in two places.

Subsec. (b). Pub. L. 91-614, § 101(d)(1)(D), added subsec. (b).

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, § 702(p)(2), Nov. 6, 1978, 92 Stat. 2937, provided that: “The amendment made by

paragraph (1) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(9) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Dec. 31, 1970, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Amendment by section 2004(d)(4) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94-455, set out as a note under section 6166 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 101(d)(1) of Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

Pub. L. 91-614, title I, §101(f), Dec. 31, 1970, 84 Stat. 1838, provided that the amendment made by that section is effective with respect to the estates of decedents dying after Dec. 31, 1973.

### § 2205. Reimbursement out of estate

If the tax or any part thereof is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this chapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 402.)

### § 2206. Liability of life insurance beneficiaries

Unless the decedent directs otherwise in his will, if any part of the gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the taxable estate. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 402; Pub. L. 94-455, title XX, §2001(c)(1)(H), Oct. 4, 1976, 90 Stat. 1852.)

#### AMENDMENTS

1976—Pub. L. 94-455 substituted “the taxable estate” for “the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051” after “policies bear to”.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

### § 2207. Liability of recipient of property over which decedent had power of appointment

Unless the decedent directs otherwise in his will, if any part of the gross estate on which the tax has been paid consists of the value of property included in the gross estate under section 2041, the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the taxable estate. If there is more than one such person, the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 402; Pub. L. 94-455, title XX, §2001(c)(1)(I), Oct. 4, 1976, 90 Stat. 1852.)

#### AMENDMENTS

1976—Pub. L. 94-455 substituted “the taxable estate” for “the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106(a), as the case may be” after “property bears to”.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

### § 2207A. Right of recovery in the case of certain marital deduction property

#### (a) Recovery with respect to estate tax

##### (1) In general

If any part of the gross estate consists of property the value of which is includible in the gross estate by reason of section 2044 (relating to certain property for which marital deduction was previously allowed), the decedent's estate shall be entitled to recover from the person receiving the property the amount by which—

(A) the total tax under this chapter which has been paid, exceeds

(B) the total tax under this chapter which would have been payable if the value of such property had not been included in the gross estate.

##### (2) Decedent may otherwise direct

Paragraph (1) shall not apply with respect to any property to the extent that the decedent

in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.

**(b) Recovery with respect to gift tax**

If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2519, such person shall be entitled to recover from the person receiving the property the amount by which—

(1) the total tax for such year under chapter 12, exceeds

(2) the total tax which would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

**(c) More than one recipient of property**

For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

**(d) Taxes and interest**

In the case of penalties and interest attributable to additional taxes described in subsections (a) and (b), rules similar to subsections (a), (b), and (c) shall apply.

(Added Pub. L. 97-34, title IV, § 403(d)(4)(A), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 105-34, title XIII, § 1302(a), Aug. 5, 1997, 111 Stat. 1039.)

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105-34 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Paragraph (1) shall not apply if the decedent otherwise directs by will.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIII, § 1302(c), Aug. 5, 1997, 111 Stat. 1039, provided that: “The amendments made by this section [amending this section and section 2207B of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE

Section applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

**§ 2207B. Right of recovery where decedent retained interest**

**(a) Estate tax**

**(1) In general**

If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 (relating to transfers with retained life estate), the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the total tax under this chapter which has been paid as—

(A) the value of such property, bears to

(B) the taxable estate.

**(2) Decedent may otherwise direct**

Paragraph (1) shall not apply with respect to any property to the extent that the decedent

in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.

**(b) More than one recipient**

For purposes of this section, if there is more than 1 person receiving the property, the right of recovery shall be against each such person.

**(c) Penalties and interest**

In the case of penalties and interest attributable to the additional taxes described in subsection (a), rules similar to the rules of subsections (a) and (b) shall apply.

**(d) No right of recovery against charitable remainder trusts**

No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 applies (determined without regard to this section).

(Added Pub. L. 100-647, title III, § 3031(f)(1), Nov. 10, 1988, 102 Stat. 3637; amended Pub. L. 101-508, title XI, § 11601(b)(1), Nov. 5, 1990, 104 Stat. 1388-490; Pub. L. 105-34, title XIII, § 1302(b), Aug. 5, 1997, 111 Stat. 1039.)

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105-34 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Paragraph (1) shall not apply if the decedent otherwise directs in a provision of his will (or a revocable trust) specifically referring to this section.”

1990—Subsec. (b). Pub. L. 101-508, § 11601(b)(1)(A), redesignated former subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2036(c)(4), such person shall be entitled to recover from the original transferee (as defined in section 2036(c)(4)(C)(ii)) the amount which bears the same ratio to the total tax for such year under chapter 12 as—

“(1) the value of such property for purposes of chapter 12, bears to

“(2) the total amount of the taxable gifts for such year.”

Subsec. (c). Pub. L. 101-508, § 11601(b)(1), redesignated subsec. (d) as (c) and substituted “subsection (a)” for “subsections (a) and (b)” and “subsections (a) and (b)” for “subsections (a), (b), and (c)”. Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 101-508, § 11601(b)(1)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1302(c) of Pub. L. 105-34, set out as a note under section 2207A of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101-508, set out as a note under section 2036 of this title.

EFFECTIVE DATE

Section effective as if included in provisions of Revenue Act of 1987, Pub. L. 100-203, title X, except that if an amount is included in the gross estate of a decedent under section 2036 of this title other than solely by reason of section 2036(c) of this title, section applicable to



such amount only with respect to property transferred after Nov. 10, 1988, see section 3031(h)(1), (3) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note under section 2036 of this title.

**§ 2208. Certain residents of possessions considered citizens of the United States**

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 85-866, title I, §102(a), Sept. 2, 1958, 72 Stat. 1674.)

**EFFECTIVE DATE**

Section applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85-866, set out as an Effective Date of 1958 Amendment note under section 2014 of this title.

**§ 2209. Certain residents of possessions considered nonresidents not citizens of the United States**

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 86-779, §4(b)(1), Sept. 14, 1960, 74 Stat. 999.)

**EFFECTIVE DATE**

Section applicable with respect to estates of decedents dying after Sept. 14, 1960, see section 4(e)(2) of Pub. L. 86-779, set out as an Effective Date of 1960 Amendment note under section 2106 of this title.

**[§ 2210. Repealed. Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]**

Section, added Pub. L. 107-16, title V, §501(a), June 7, 2001, 115 Stat. 69, related to termination of applicability of chapter to estates of decedents dying after Dec. 31, 2009.

**PRIOR PROVISIONS**

A prior section 2210, added Pub. L. 98-369, div. A, title V, §544(a), July 18, 1984, 98 Stat. 892; amended Pub. L. 99-514, title XVIII, §§1854(d)(1)(A), (2)-(6), 1899A(37), Oct. 22, 1986, 100 Stat. 2879, 2880, 2960, related to liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative, prior to repeal by Pub. L. 101-239, title VII, §7304(b)(1), (3), Dec. 19, 1989, 103 Stat. 2353, applicable to estates of decedents dying after July 12, 1989.

**EFFECTIVE DATE OF REPEAL**

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312,

set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

**CHAPTER 12—GIFT TAX**

Subchapter	Sec. <sup>1</sup>
A. Determination of Tax Liability .....	2501
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**Subchapter A—Determination of Tax Liability**

Sec.	
2501.	Imposition of tax.
2502.	Rate of tax.
2503.	Taxable gifts.
2504.	Taxable gifts for preceding calendar periods.
2505.	Unified credit against gift tax.

**AMENDMENTS**

1981—Pub. L. 97-34, title IV, §442(a)(4)(E), Aug. 13, 1981, 95 Stat. 321, substituted “preceding calendar periods” for “preceding years and quarters” in item 2504.

1976—Pub. L. 94-455, title XX, §2001(c)(2)(B)(i), Oct. 4, 1976, 90 Stat. 1853, added item 2505.

1970—Pub. L. 91-614, title I, §102(a)(4)(B), Dec. 31, 1970, 84 Stat. 1840, substituted “Taxable gifts for preceding years and quarters” for “Taxable gifts for preceding years” in item 2504.

**§ 2501. Imposition of tax**

**(a) Taxable transfers**

**(1) General rule**

A tax, computed as provided in section 2502, is hereby imposed for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident.

**(2) Transfers of intangible property**

Except as provided in paragraph (3), paragraph (1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

**(3) Exception**

**(A) Certain individuals**

Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

**(B) Credit for foreign gift taxes**

The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.

**(4) Transfers to political organizations**

Paragraph (1) shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.

**(5) Transfers of certain stock**

**(A) In general**

In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

<sup>1</sup> Section numbers editorially supplied.

(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

**(B) Foreign corporation described**

A foreign corporation is described in this subparagraph with respect to a donor if—

(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation.

**(C) U.S.-asset value**

For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.

**(6) Transfers to certain exempt organizations**

Paragraph (1) shall not apply to the transfer of money or other property to an organization described in paragraph (4), (5), or (6) of section 501(c) and exempt from tax under section 501(a), for the use of such organization.

**(b) Certain residents of possessions considered citizens of the United States**

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

**(c) Certain residents of possessions considered nonresidents not citizens of the United States**

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth

or residence within such possession of the United States.

**(d) Cross references**

**(1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).**

**(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).**

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 85-866, title I, §§43(b), 102(b), Sept. 2, 1958, 72 Stat. 1641, 1674; Pub. L. 86-779, §4(d), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89-809, title I, §109(a), Nov. 13, 1966, 80 Stat. 1574; Pub. L. 91-614, title I, §102(a)(1), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 93-625, §14(a), Jan. 3, 1975, 88 Stat. 2121; Pub. L. 94-455, title XIX, §§1902(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834; Pub. L. 97-34, title IV, §442(a)(1), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100-647, title III, §3031(a)(2), Nov. 10, 1988, 102 Stat. 3635; Pub. L. 101-508, title XI, §11601(b)(2), Nov. 5, 1990, 104 Stat. 1388-490; Pub. L. 104-191, title V, §511(e)(2), (f)(2)(B), Aug. 21, 1996, 110 Stat. 2098, 2100; Pub. L. 105-34, title XVI, §1602(g)(5), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 108-357, title VIII, §804(d), Oct. 22, 2004, 118 Stat. 1571; Pub. L. 114-113, div. Q, title IV, §408(a), Dec. 18, 2015, 129 Stat. 3120.)

**AMENDMENTS**

2015—Subsec. (a)(6). Pub. L. 114-113 added par. (6).

2004—Subsec. (a)(3) to (5). Pub. L. 108-357 added pars. (3) and (5), redesignated former par. (5) as (4), and struck out former pars. (3) and (4) which related to exception of certain individuals from taxable transfers and burden of proof.

1997—Subsec. (a)(3)(C). Pub. L. 105-34 substituted “donor” for “decendent”.

1996—Subsec. (a)(3). Pub. L. 104-191, §511(e)(2), substituted “Exception” for “Exceptions” in heading and amended text generally. Prior to amendment, text read as follows: “Paragraph (2) shall not apply in the case of a donor who at any time after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship unless—

“(A) such donor’s loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487), or

“(B) such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.”

Subsec. (a)(3)(E). Pub. L. 104-191, §511(f)(2)(B), added subpar. (E).

1990—Subsec. (d)(3). Pub. L. 101-508 struck out par. (3) which read as follows: “For treatment of certain transfers related to estate tax valuation freezes as gifts to which this chapter applies, see section 2036(c)(4).”

1988—Subsec. (d)(3). Pub. L. 100-647 added par. (3).

1981—Subsec. (a)(1), (4). Pub. L. 97-34 substituted “calendar year” for “calendar quarter” wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94-455 inserted “for each calendar quarter” after “hereby imposed” and struck out “For the first calendar quarter of calendar year 1971 and each calendar quarter thereafter” after “General rule—”.

Subsec. (a)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (a)(5). Pub. L. 93-625 added par. (5).

1970—Subsec. (a)(1). Pub. L. 91-614, §102(a)(1)(A), substituted “For the first calendar quarter of the calendar year 1971 and each calendar quarter thereafter” for “For the calendar year 1955 and each calendar year thereafter” and “during such calendar quarter” for “during such calendar year”.

Subsec. (a)(4). Pub. L. 91-614, §102(a)(1)(B), substituted “calendar quarter” for “calendar year”.

1966—Subsec. (a). Pub. L. 89-809 redesignated existing provisions as par. (1), struck out “, except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year” after “resident or nonresident”, and added pars. (2) to (4).

1960—Subsec. (a). Pub. L. 86-779, §4(d)(2), struck out “who is” before “not a citizen”.

Subsecs. (c), (d). Pub. L. 86-779, §4(d)(1), added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (b). Pub. L. 85-866, §102(b), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85-866, §102(b), redesignated former subsec. (b) as (c) and Pub. L. 85-866, §43(b), made the heading read in the plural, designated existing provisions as par. (2) and added par. (1).

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title IV, §408(b), Dec. 18, 2015, 129 Stat. 3121, provided that: “The amendment made by subsection (a) [amending this section] shall apply to gifts made after the date of the enactment of this Act [Dec. 18, 2015].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)–(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104-191, set out as a note under section 877 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101-508, set out as a note under section 2036 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable in cases where transfer referred to in section 2036(c)(1)(B) of this title is on or after June 21, 1988, see section 3031(h)(2) of Pub. L. 100-647, set out as a note under section 2036 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §442(e), Aug. 13, 1981, 95 Stat. 323, provided that: “The amendments made by this section [amending this section and sections 1015, 2502, 2503, 2504, 2505, 2512, 2513, 2522, 6019, 6075, and 6212 of this title] shall apply with respect to gifts made after December 31, 1981.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIX, §1902(c)(2), Oct. 4, 1976, 90 Stat. 1806, as amended by Pub. L. 95-600, title VII, §703(j)(12), Nov. 6, 1978, 92 Stat. 2942, provided that: “The amendments made by paragraphs (10), (11), and

(12)(D) and (E) of subsection (a) [amending this section and sections 2522 and 2523 of this title] shall apply with respect to gifts made after December 31, 1976.”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93-625, §14(b), Jan. 3, 1975, 88 Stat. 2121, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers made after May 7, 1974.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-614, title I, §102(e), Dec. 31, 1970, 84 Stat. 1842, provided that: “The amendments made by this section [amending this section and sections 1015, 2012, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 6019, 6075, 6212, 6214, 6324, 6501, and 6512 of this title and enacting provisions set out as a note under this section] shall apply with respect to gifts made after December 31, 1970.”

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §109(c), Nov. 13, 1966, 80 Stat. 1575, provided that: “The amendments made by this section [amending this section and section 2511 of this title] shall apply with respect to the calendar year 1967 and all calendar years thereafter.”

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-779, §4(e)(3), Sept. 14, 1960, 74 Stat. 1000, provided that: “The amendments made by subsection (d) [amending this section] shall apply with respect to gifts made after the date of the enactment of this Act [Sept. 14, 1960].”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to gifts made after September 2, 1958, see section 102(d) of Pub. L. 85-866, set out as a note under section 2014 of this title.

#### CONSTRUCTION OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title IV, §408(c), Dec. 18, 2015, 129 Stat. 3121, provided that: “Nothing in the amendment made by subsection (a) [amending this section] shall be construed to create any inference with respect to whether any transfer of property (whether made before, on, or after the date of the enactment of this Act [Dec. 18, 2015]) to an organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 is a transfer of property by gift for purposes of chapter 12 of such Code.”

#### ELECTION TO HAVE AMENDMENTS BY TITLE IV OF THE ECONOMIC RECOVERY TAX ACT OF 1981 NOT APPLY

Pub. L. 97-448, title I, §104(d)(3), Jan. 12, 1983, 96 Stat. 2383, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) In the case of any decedent—

“(i) who dies before August 13, 1984, and

“(ii) who made a gift (before August 13, 1981, and during the 3-year period ending on the date of the decedent’s death) on which tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has been paid before April 16, 1982,

such decedent’s executor may make an election to have subtitle B of such Code (relating to estate and gift taxes) applied with respect to such decedent without regard to any of the amendments made by title IV of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, title IV].

“(B) An election under subparagraph (A) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

“(C) An election under subparagraph (A), once made, shall be irrevocable.”

## § 2502. Rate of tax

### (a) Computation of tax

The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

**(b) Preceding calendar period**

Whenever used in this title in connection with the gift tax imposed by this chapter, the term “preceding calendar period” means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term “calendar year 1932” includes only that portion of such year after June 6, 1932.

**(c) Tax to be paid by donor**

The tax imposed by section 2501 shall be paid by the donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 91-614, title I, §102(a)(2), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94-455, title XX, §2001(b)(1), Oct. 4, 1976, 90 Stat. 1849; Pub. L. 97-34, title IV, §442(a)(2), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100-203, title X, §10401(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330-431; Pub. L. 107-16, title V, §511(d), June 7, 2001, 115 Stat. 70; Pub. L. 111-312, title III, §302(b)(2), Dec. 17, 2010, 124 Stat. 3301.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-312 amended subsec. (a) to read as if amendment by Pub. L. 107-16, §511(d), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107-16, §511(d), amended subsec. (a) generally. Prior to amendment, text read as follows: “The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

“(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

“(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.”

1987—Subsec. (a)(1). Pub. L. 100-203, §10401(b)(2)(B)(i), substituted “under section 2001(c)” for “in accordance with the rate schedule set forth in section 2001(c)”.

Subsec. (a)(2). Pub. L. 100-203, §10401(b)(2)(B)(ii), substituted “under such section” for “in accordance with such rate schedule”.

1981—Subsec. (a). Pub. L. 97-34 substituted in introductory text and par. (1) “calendar year” for “calendar quarter” and in pars. (1) and (2) “calendar periods” for “calendar years and calendar quarters”.

Subsec. (b). Pub. L. 97-34 substituted definition of “preceding calendar period” for “calendar quarter”, the latter including only the first calendar quarter of the calendar year 1971 and succeeding calendar quarters (covered in par. (2)), the former incorporating former subsec. (c)(1) definition of “preceding calendar years” as meaning calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970 and “calendar year 1932” as including only the portion of such year after June 6, 1932, and former subsec. (c)(2) definition of “preceding calendar

quarters” as meaning the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the calendar quarter for which the tax is being computed.

Subsecs. (c), (d). Pub. L. 97-34 redesignated subsec. (d) as (c). Former subsec. (c), defining “preceding calendar years” and “preceding calendar quarters”, was incorporated in subsec. (b).

1976—Subsec. (a). Pub. L. 94-455 inserted “tentative” after “(1) a” and “(2) a” and substituted in par. (1) “section 2001(c)” for “this subsection” after “set forth in”.

1970—Subsec. (a). Pub. L. 91-614, §102(a)(2)(A), substituted a computation of tax formula based on the current calendar quarter, preceding calendar quarters, and preceding calendar years for a formula based entirely on the current and preceding calendar years.

Subsec. (b). Pub. L. 91-614, §102(a)(2)(B), substituted definition of “calendar quarter” for definition of “calendar year”.

Subsec. (c). Pub. L. 91-614, §102(a)(2)(B), substituted definition of “preceding calendar years and quarters” for definition of “preceding calendar years”.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title III, §302(b)(2), Dec. 17, 2010, 124 Stat. 3301, provided that the amendment by section 302(b)(2) is effective on and after Jan. 1, 2011.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, §511(f)(3), June 7, 2001, 115 Stat. 71, provided that: “The amendments made by subsections (d) and (e) [amending this section and section 2511 of this title] shall apply to gifts made after December 31, 2009.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable in the case of decedents dying, and gifts made, after Dec. 31, 1987, see section 10401(c) of Pub. L. 100-203, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2001(d)(2), Oct. 4, 1976, 90 Stat. 1854, provided that: “The amendments made by subsections (b) and (c)(2) [enacting section 2505 of this title, amending this section and section 2504 of this title, and repealing section 2521 of this title] shall apply to gifts made after December 31, 1976.”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

**§ 2503. Taxable gifts**

**(a) General definition**

The term “taxable gifts” means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following).

**(b) Exclusions from gifts**

**(1) In general**

In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in

the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

**(2) Inflation adjustment**

In the case of gifts made in a calendar year after 1998, the \$10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

(A) \$10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 1997” for “calendar year 2016” in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.

**(c) Transfer for the benefit of minor**

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

**[(d) Repealed. Pub. L. 97-34, title III, § 311(h)(5), Aug. 13, 1981, 95 Stat. 282]**

**(e) Exclusion for certain transfers for educational expenses or medical expenses**

**(1) In general**

Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

**(2) Qualified transfer**

For purposes of this subsection, the term “qualified transfer” means any amount paid on behalf of an individual—

(A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or

(B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

**(f) Waiver of certain pension rights**

If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

**(g) Treatment of certain loans of artworks**

**(1) In general**

For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if—

(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

**(2) Definitions**

For purposes of this section—

**(A) Qualified work of art**

The term “qualified work of art” means any archaeological, historic, or creative tangible personal property.

**(B) Private foundation**

The term “private foundation” has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

(Aug. 16, 1954, ch. 736, 68A Stat. 404; Pub. L. 91-614, title I, § 102(a)(3), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 95-600, title VII, § 702(j)(2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 97-34, title III, § 311(h)(5), title IV, §§ 441(a), (b), 442(a)(3), Aug. 13, 1981, 95 Stat. 282, 319, 320; Pub. L. 99-514, title XVIII, § 1898(h)(1)(B), Oct. 22, 1986, 100 Stat. 2957; Pub. L. 100-647, title I, § 1018(s)(2)(A), (u)(52), Nov. 10, 1988, 102 Stat. 3586, 3593; Pub. L. 101-239, title VII, § 7811(m)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 105-34, title V, § 501(c), Aug. 5, 1997, 111 Stat. 846; Pub. L. 115-97, title I, § 11002(d)(1)(EE), Dec. 22, 2017, 131 Stat. 2060.)

**INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS**

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

**AMENDMENTS**

2017—Subsec. (b)(2)(B). Pub. L. 115-97 substituted “for ‘calendar year 2016’ in subparagraph (A)(ii)” for “for ‘calendar year 1992’ in subparagraph (B)”.

1997—Subsec. (b). Pub. L. 105-34 designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101-239 redesignated subsec. (f), relating to treatment of certain loans of artworks, as (g).

1988—Subsec. (e)(2)(B). Pub. L. 100-647, § 1018(u)(52), substituted “section 213(d)” for “section 213(e)”.

Subsec. (f). Pub. L. 100-647, § 1018(s)(2)(A), added subsec. (f) relating to treatment of certain loans of artworks.

1986—Subsec. (f). Pub. L. 99-514 added subsec. (f).

1981—Subsec. (a). Pub. L. 97-34, § 442(a)(3)(A), substituted “the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following)” for “, in the case of gifts made after December 31, 1970, the total amount of gifts made during calendar quarter, less the deductions provided in subchapter C (sec. 2521 and following)” and struck out provision that in the case of gifts made before Jan. 1, 1971, “taxable gifts” means

the total amount of gifts made during the calendar year, less the deductions provided in subchapter C.

Subsec. (b). Pub. L. 97-34, §442(a)(3)(B), substituted provision that in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such year for provision that in computing taxable gifts for the calendar quarter, in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year 1971 and subsequent calendar years, \$10,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such quarter.

Pub. L. 97-34, §441(a), substituted “\$10,000” for “\$3,000”.

Subsec. (d). Pub. L. 97-34, §311(h)(5), repealed subsec. (d) which related to individual retirement accounts, etc., for spouse.

Subsec. (e). Pub. L. 97-34, §441(b), added subsec. (e).

1978—Subsec. (d). Pub. L. 95-600 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-614, §102(a)(3)(A), divided definition of “taxable gifts” into gifts made after Dec. 31, 1970, where taxable gifts are based on the total amount of gifts made during the calendar quarter, less the applicable deductions, and gifts made before Jan. 1, 1971, where taxable gifts are based on the total amount of gifts made during the calendar year, less the applicable deductions.

Subsec. (b). Pub. L. 91-614, §102(a)(3)(B), substituted provisions with regard to computing taxable gifts for the calendar quarter, in the case of gifts made to any persons by the donor during the calendar year 1971 and subsequent calendar years, \$3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not be included in the total amount of gifts made during such quarter for provisions requiring in the case of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not be included in the total amount of gifts made during such year.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1018(s)(2)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to loans after July 31, 1989.”

Amendment by section 1018(u)(52) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98-397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99-514, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(5) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

Pub. L. 97-34, title IV, §441(c), Aug. 13, 1981, 95 Stat. 319, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after December 31, 1981.

“(2) TRANSITIONAL RULE.—If—

“(A) an instrument executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981] provides for a power of appointment which may be exercised during any period after December 31, 1981,

“(B) such power of appointment is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or the corresponding provision of prior law),

“(C) the instrument described in subparagraph (A) has not been amended on or after the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], and

“(D) the State has not enacted a statute applicable to such gift under which such power of appointment is to be construed as being defined in terms of, or by reference to, the amount of the exclusion under such section 2503(b) after its amendment by subsection (a), then the amendment made by subsection (a) shall not apply to such gift.”

Amendment by section 442(a)(3) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(j)(3)(B), Nov. 6, 1978, 92 Stat. 2932, provided that: “The amendment made by paragraph (2) [amending this section] shall apply to transfers made after December 31, 1976.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 2504. Taxable gifts for preceding calendar periods

#### (a) In general

In computing taxable gifts for preceding calendar periods for purposes of computing the tax for any calendar year—

(1) there shall be treated as gifts such transfers as were considered to be gifts under the

gift tax laws applicable to the calendar period in which the transfers were made,

(2) there shall be allowed such deductions as were provided for under such laws, and

(3) the specific exemption in the amount (if any) allowable under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) shall be applied in all computations in respect of preceding calendar periods ending before January 1, 1977, for purposes of computing the tax for any calendar year.

**(b) Exclusions from gifts for preceding calendar periods**

In the case of gifts made to any person by the donor during preceding calendar periods, the amount excluded, if any, by the provisions of gift tax laws applicable to the periods in which the gifts were made shall not, for purposes of subsection (a), be included in the total amount of the gifts made during such preceding calendar periods.

**(c) Valuation of gifts**

If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.

**(d) Net gifts**

The term “net gifts” as used in the corresponding provisions of prior laws shall be read as “taxable gifts” for purposes of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 405; Pub. L. 91-614, title I, §102(a)(4)(A), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94-455, title XX, §2001(c)(2)(A), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 97-34, title IV, §442(a)(4)(A)-(D), Aug. 13, 1981, 95 Stat. 321; Pub. L. 105-34, title V, §506(d), Aug. 5, 1997, 111 Stat. 856; Pub. L. 105-206, title VI, §6007(e)(2)(B)[(C)], July 22, 1998, 112 Stat. 810.)

**REFERENCES IN TEXT**

The Tax Reform Act of 1976, referred to in subsec. (a)(3), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94-455. For complete classification of this Act to the Code, see Tables.

**AMENDMENTS**

1998—Subsec. (c). Pub. L. 105-206 substituted “gifts” for “certain gifts for preceding calendar periods” in heading and amended text generally. Prior to amendment, text read as follows: “If the time has expired within which a tax may be assessed under this chapter or under corresponding provisions of prior laws on the transfer of property by gift made during a preceding calendar period, as defined in section 2502(b), the value of such gift made in such preceding calendar period shall, for purposes of computing the tax under this chapter for any calendar year, be the value of such gift which was used in computing the tax for the last preceding calendar period for which a tax under this chapter or under corresponding provisions of prior laws was assessed or paid.”

1997—Subsec. (c). Pub. L. 105-34 struck out “, and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period” after “as defined in section 2502(b)”.

1981—Pub. L. 97-34, §442(a)(4)(D), substituted “calendar periods” for “years and quarters” in section catchline.

Subsec. (a). Pub. L. 97-34, §442(a)(4)(A), substituted in introductory text “preceding calendar periods” and “calendar year” for “preceding calendar years or calendar quarters” and “calendar quarter”, incorporated existing text in provisions designated pars. (1) to (3), and substituted in par. (1) “calendar period” for “years or calendar quarters” and in par. (3) “preceding calendar periods” and “calendar year” for “calendar years or calendar quarters” and “calendar quarter”.

Subsec. (b). Pub. L. 97-34, §442(a)(4)(B), substituted in heading “calendar periods” for “years and quarters” and in text “preceding calendar periods” for “preceding calendar years and calendar quarters”, “the periods” for “the years and calendar quarters”, and “such preceding calendar periods” for “such years and calendar quarters”.

Subsec. (c). Pub. L. 97-34, §442(a)(4)(C), substituted in heading “calendar periods” for “calendar years and quarters” and in text “preceding calendar period” for “preceding calendar year or calendar quarter” in four places, “any calendar year” for “any calendar quarter”, and “section 2502(b)” for “section 2502(c)”.

1976—Subsec. (a). Pub. L. 94-455 inserted “(as in effect before its repeal by the Tax Reform Act of 1977)” after “section 2521” and “ending before January 1, 1977” after “years or calendar quarters” and substituted “of” for “to previous” after “computations in respect”.

1970—Pub. L. 91-614 substituted “Taxable gifts for preceding years and quarters” for “Taxable gifts for preceding years” in section catchline.

Subsec. (a). Pub. L. 91-614 substituted “In computing taxable gifts for the preceding calendar years or calendar quarters for the purpose of computing the tax for any calendar quarter,” for “In computing taxable gifts for the calendar year 1954 and preceding calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter,” provided that the laws applicable in the calendar quarters as well as the years in which the transfers in question were made shall apply, and substituted “previous calendar years or calendar quarters for the purpose of computing the tax for any calendar year or calendar quarter” for “the calendar year 1954 and previous calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter”.

Subsec. (b). Pub. L. 91-614 inserted reference to calendar quarters in heading, substituted “during preceding calendar years and calendar quarters,” for “during the calendar year 1954 and preceding calendar years,” made reference to the amount excluded by gift tax laws applicable to the calendar quarters as well as years in which the gifts were made, and substituted “during such years and calendar quarters” for “during such year”.

Subsec. (c). Pub. L. 91-614 inserted reference to calendar quarters in heading, inserted “or calendar quarter” after “calendar year” in four places, and substituted “for any calendar quarter,” for “for the calendar year 1955 and subsequent calendar years,”.

Subsec. (d). Pub. L. 91-614 struck out “For years before the calendar year 1955” from explanation of term “net gifts” as used in corresponding provisions of prior laws.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to gifts made after Aug. 5, 1997, see section 506(e)(1) of Pub. L. 105-34,

as amended, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

### § 2505. Unified credit against gift tax

#### (a) General rule

In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.

#### (b) Adjustment to credit for certain gifts made before 1977

The amount allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the individual after September 8, 1976.

#### (c) Limitation based on amount of tax

The amount of the credit allowed under subsection (a) for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(Added Pub. L. 94-455, title XX, § 2001(b)(2), Oct. 4, 1976, 90 Stat. 1849; amended Pub. L. 97-34, title IV, §§ 401(b), 442(a)(5), Aug. 13, 1981, 95 Stat. 299, 321; Pub. L. 101-508, title XI, § 11801(a)(40), (c)(19)(B), Nov. 5, 1990, 104 Stat. 1388-521, 1388-528; Pub. L. 105-34, title V, § 501(a)(2), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107-16, title V, § 521(b), June 7, 2001, 115 Stat. 71; Pub. L. 111-312, title III, §§ 301(b), 302(b)(1)(A), (d)(2), 303(b)(1), Dec. 17, 2010, 124 Stat. 3300-3303.)

#### REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94-455. For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-312, § 302(d)(2), inserted concluding provisions.

Subsec. (a)(1). Pub. L. 111-312, § 303(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the applicable credit amount in effect under section 2010(c) for such calendar year, reduced by”.

Pub. L. 111-312, § 302(b)(1)(A), struck out “(determined as if the applicable exclusion amount were \$1,000,000)” after “calendar year”.

Pub. L. 111-312, § 301(b), amended subsec. (a)(1) to read as if amendment by Pub. L. 107-16, § 521(b)(2), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a)(1). Pub. L. 107-16, § 521(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the applicable credit amount in effect under section 2010(c) for such calendar year (determined as if the applicable exclusion amount were \$1,000,000), reduced by”.

Pub. L. 107-16, § 521(b)(1), inserted “(determined as if the applicable exclusion amount were \$1,000,000)” after “calendar year”.

1997—Subsec. (a)(1). Pub. L. 105-34 substituted “the applicable credit amount in effect under section 2010(c) for such calendar year” for “\$192,800”.

1990—Subsecs. (b) to (d). Pub. L. 101-508 redesignated subsecs. (c) and (d) as subsecs. (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against gift tax.

1981—Subsec. (a). Pub. L. 97-34, § 442(a)(5)(A), substituted in provision preceding par. (1) “year” for “quarter”, and “periods” for “quarters” in par. (2).

Subsec. (a)(1). Pub. L. 97-34, § 401(b)(1), substituted “\$192,800” for “\$47,000”.

Subsec. (b). Pub. L. 97-34, § 401(b)(2), struck out from heading “\$47,000” before “credit”, substituted subsec. (a)(1) substitutions for “\$192,800” of amounts of “\$62,800”, “\$79,300”, “\$96,300”, “\$121,800”, and “\$155,800” in the case of gifts made in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a)(1) substitutions for “\$47,000” of amounts of “\$6,000”, “\$30,000”, “\$34,000”, “\$38,000”, and “\$42,500” in the case of gifts made after Dec. 31, 1976, and before July 1, 1977, after June 30, 1977, and before Jan. 1, 1978; after Dec. 31, 1977, and before Jan. 1, 1979, after Dec. 31, 1978, and before Jan. 1, 1980, and after Dec. 31, 1979, and before Jan. 1, 1981, respectively.

Subsec. (d). Pub. L. 97-34, § 442(a)(5)(B), substituted “year” for “quarter” in two places.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title III, § 301(b), Dec. 17, 2010, 124 Stat. 3300, provided that the amendment by section 301(b) is effective on and after Jan. 1, 2011.

Pub. L. 111-312, title III, § 302(b)(1)(B), Dec. 17, 2010, 124 Stat. 3301, provided that: “The amendment made by this paragraph [amending this section] shall apply to gifts made after December 31, 2010.”

Amendment by section 302(d)(2) of Pub. L. 111-312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111-312, set out as a note under section 2001 of this title.

Amendment by section 303(b)(1) of Pub. L. 111-312 applicable to estates of decedents dying and gifts made after Dec. 31, 2010, see section 303(c)(1) of Pub. L. 111-312, set out as a note under section 2010 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 521(b)(1) of Pub. L. 107-16 applicable to estates of decedents dying, and gifts made, after Dec. 31, 2001, and amendment by section 521(b)(2) of Pub. L. 107-16 applicable to gifts made after Dec. 31, 2009, see section 521(e)(1), (2) of Pub. L. 107-16, set out as a note under section 2010 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, § 401(c)(2), Aug. 13, 1981, 95 Stat. 300, provided that: “The amendments made by sub-



section (b) [amending this section] shall apply to gifts made after such date [Dec. 31, 1981].”

Amendment by section 442(a)(5) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

### Subchapter B—Transfers

Sec.	
2511.	Transfers in general.
2512.	Valuation of gifts.
2513.	Gift by husband or wife to third party.
2514.	Powers of appointment.
2515.	Treatment of generation-skipping transfer tax.
[2515A.	Repealed.]
2516.	Certain property settlements.
[2517.	Repealed.]
2518.	Disclaimers.
2519.	Dispositions of certain life estates.

#### AMENDMENTS

1986—Pub. L. 99-514, title XIV, §1432(d)(2), title XVIII, §1852(e)(2)(B), Oct. 22, 1986, 100 Stat. 2730, 2868, added item 2515 and struck out item 2517 “Certain annuities under qualified plans”.

1981—Pub. L. 97-34, title IV, §403(c)(3)(C), (d)(3)(B)(ii), Aug. 13, 1981, 95 Stat. 302, 304, as amended Pub. L. 97-448, title I, §104(a)(3)(B), Jan. 12, 1983, 96 Stat. 2380, struck out items 2515 “Tenancies by the entirety in real property” and 2515A “Tenancies by the entirety in personal property” and added item 2519.

1978—Pub. L. 95-600, title VII, §702(k)(1)(C), Nov. 6, 1978, 92 Stat. 2932, substituted in item 2515 “Tenancies by the entirety in real property” for “Tenancies by the entirety” and added item 2515A.

1976—Pub. L. 94-455, title XX, §2009(b)(3)(A), Oct. 4, 1976, 90 Stat. 1894, added item 2518.

1958—Pub. L. 85-866, title I, §68(b), Sept. 2, 1958, 72 Stat. 1659, added item 2517.

### § 2511. Transfers in general

#### (a) Scope

Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

#### (b) Intangible property

For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)—

- (1) shares of stock issued by a domestic corporation, and
- (2) debt obligations of—
  - (A) a United States person, or
  - (B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 89-809, title I, §109(b), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 107-16, title V, §511(e), June 7, 2001, 115 Stat. 71; Pub. L. 107-147, title IV, §411(g)(1), Mar. 9, 2002, 116 Stat. 46; Pub. L. 111-312, title III, §302(e), Dec. 17, 2010, 124 Stat. 3302.)

#### AMENDMENTS

2010—Subsec. (c). Pub. L. 111-312 struck out subsec. (c). Text read as follows: “Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a transfer of property by gift, unless the trust is treated as wholly owned by the donor or the donor’s spouse under subpart E of part I of subchapter J of chapter 1.”

2002—Subsec. (c). Pub. L. 107-147 substituted “transfer of property by gift,” for “taxable gift under section 2503.”

2001—Subsec. (c). Pub. L. 107-16 added subsec. (c).

1966—Subsec. (b). Pub. L. 89-809 inserted reference to nonresidents who are excepted from the application of section 2501(a)(2) and expanded section to include debt obligations of United States persons or the United States, a State or any political subdivision thereof, or the District of Columbia.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111-312, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to gifts made after Dec. 31, 2009, see section 511(f)(3) of Pub. L. 107-16, set out as a note under section 2502 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to calendar year 1967 and all calendar years thereafter, see section 109(c) of Pub. L. 89-809, set out as a note under section 2501 of this title.

### § 2512. Valuation of gifts

(a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money’s worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

#### (c) Cross reference

**For individual’s right to be furnished on request a statement regarding any valuation made by the Secretary of a gift by that individual, see section 7517.**

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91-614, title I, §102(b)(1), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94-455, title XX, §2008(a)(2)(B), Oct.

4, 1976, 90 Stat. 1891; Pub. L. 97-34, title IV, § 442(b)(1), Aug. 13, 1981, 95 Stat. 322.)

#### AMENDMENTS

1981—Subsec. (b). Pub. L. 97-34 substituted “calendar year” for “calendar quarters”.

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1970—Subsec. (b). Pub. L. 91-614 substituted “calendar quarter” for “calendar year”.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

### § 2513. Gift by husband or wife to third party

#### (a) Considered as made one-half by each

##### (1) In general

A gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514(c), over such interest. For purposes of this section, an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

##### (2) Consent of both spouses

Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

#### (b) Manner and time of signifying consent

##### (1) Manner

A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary.

##### (2) Time

Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations—

(A) The consent may not be signified after the 15th day of April following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse.

(B) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 6212(a).

#### (c) Revocation of consent

Revocation of a consent previously signified shall be made in such manner as in provided under regulations prescribed by the Secretary, but the right to revoke a consent previously signified with respect to a calendar year—

(1) shall not exist after the 15th day of April following the close of such year if the consent was signified on or before such 15th day; and

(2) shall not exist if the consent was not signified until after such 15th day.

#### (d) Joint and several liability for tax

If the consent required by subsection (a)(2) is signified with respect to a gift made in any calendar year, the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91-614, title I, § 102(b)(2), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title IV, § 442(b)(2), Aug. 13, 1981, 95 Stat. 322.)

#### AMENDMENTS

1981—Subsec. (a)(1), (2). Pub. L. 97-34, § 442(b)(2)(A), substituted “calendar year” for “calendar quarter”.

Subsec. (b)(2). Pub. L. 97-34, § 442(b)(2)(B)-(D), in introductory text, substituted “calendar year” for “calendar quarter”, in subpar. (A), substituted “The consent” for “the consent”, “15th day of April following the close of such year” for “15th day of the second month following the close of such calendar quarter”, and “such year” for “such calendar quarter” in two other places, and in subpar. (B) substituted “The consent” and “such year” for “the consent” and “such calendar quarter”.

Subsec. (c). Pub. L. 97-34, § 442(b)(2)(E), in provision preceding par. (1) substituted “calendar year” for “calendar quarter” and in par. (1) “15th day of April following the close of such year” for “15th day of the second month following the close of such quarter”.

Subsec. (d). Pub. L. 97-34, § 442(b)(2)(F), substituted “any calendar year” and “such year” for “any calendar quarter” and “such calendar quarter”.

1976—Subsecs. (b)(1), (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1970—Subsecs. (a), (b)(2). Pub. L. 91-614, § 102(b)(2)(A), substituted “calendar quarter” for “calendar year”.

Subsec. (b)(2)(A). Pub. L. 91-614, § 102(b)(2)(B), substituted “the 15th day of the second month” for “the 15th day of April” and substituted “such calendar quarter” for “such year”.

Subsec. (b)(2)(B). Pub. L. 91-614, § 102(b)(2)(C), substituted “such calendar quarter” for “such year”.

Subsec. (c). Pub. L. 91-614, § 102(b)(2)(A), substituted “calendar quarter” for “calendar year”.

Subsec. (c)(1). Pub. L. 91-614, § 102(b)(2)(D), substituted “15th day of the second month following the close of such calendar quarter” for “15th day of April following the close of such year”.

Subsec. (d). Pub. L. 91-614, § 102(b)(2)(A), (E), substituted “calendar quarter” for “calendar year” and “such calendar quarter” for “such year”.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

**§ 2514. Powers of appointment****(a) Powers created on or before October 21, 1942**

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(1) such partial release occurred before November 1, 1951, or

(2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

**(b) Powers created after October 21, 1942**

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

**(c) Definition of general power of appointment**

For purposes of this section, the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the “possessor”), his estate, his creditors, or the creditors of his estate; except that—

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(C) if (after the application of subparagraphs (A) and (B)) the power is a general

power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

**(d) Creation of another power in certain cases**

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

**(e) Lapse of power**

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) \$5,000, or

(2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

**(f) Date of creation of power**

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 407; Pub. L. 94-455, title XX, § 2009(b)(4)(F), Oct. 4, 1976, 90 Stat. 1894.)

**AMENDMENTS**

1976—Subsec. (b). Pub. L. 94-455 struck out “A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.”

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

### § 2515. Treatment of generation-skipping transfer tax

In the case of any taxable gift which is a direct skip (within the meaning of chapter 13), the amount of such gift shall be increased by the amount of any tax imposed on the transferor under chapter 13 with respect to such gift.

(Added Pub. L. 99-514, title XIV, § 1432(d)(1), Oct. 22, 1986, 100 Stat. 2730.)

#### PRIOR PROVISIONS

A prior section, acts Aug. 16, 1954, ch. 736, 68A Stat. 409; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(b)(3), 84 Stat. 1841; Oct. 4, 1976, Pub. L. 94-455, title XX, § 2002(c)(2), 90 Stat. 1855; Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(k)(1)(B), 92 Stat. 2932, related to tenancies by the entirety in real property, prior to repeal applicable to gifts made after Dec. 31, 1981, by Pub. L. 97-34, title IV, § 403(c)(3)(B), (e)(2), Aug. 13, 1981, 95 Stat. 302, 305.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### [§ 2515A. Repealed. Pub. L. 97-34, title IV, § 403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302]

Section, added Pub. L. 95-600, title VII, § 702(k)(1)(A), Nov. 6, 1978, 92 Stat. 2932, related to tenancies by the entirety in personal property.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

### § 2516. Certain property settlements

Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

(1) to either spouse in settlement of his or her marital or property rights, or

(2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 409; Pub. L. 98-369, div. A, title IV, § 425(b), July 18, 1984, 98 Stat. 804.)

#### AMENDMENTS

1984—Pub. L. 98-369 substituted in introductory text “within the 3-year period beginning on the date 1 year before such agreement is entered into” for “within 2 years thereafter”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title IV, § 425(c)(2), July 18, 1984, 98 Stat. 804, provided that: “The amendment made by subsection (b) [amending this section] shall apply to

transfers after the date of the enactment of this Act [July 18, 1984].”

### [§ 2517. Repealed. Pub. L. 99-514, title XVIII, § 1852(e)(2)(A), Oct. 22, 1986, 100 Stat. 2868]

Section, added and amended Pub. L. 85-866, title I, §§ 23(f), 68(a), Sept. 2, 1958, 72 Stat. 1623, 1659; Pub. L. 87-792, § 7(j), Oct. 10, 1962, 76 Stat. 830; Mar. 8, 1966, Pub. L. 89-365, § 2(b), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(24), 83 Stat. 528; Pub. L. 94-455, title XX, § 2009(c) (4), (5), Oct. 4, 1976, 90 Stat. 1895, 1896; Pub. L. 97-34, title III, § 311(d)(2), Aug. 13, 1981, 95 Stat. 280; Pub. L. 98-369, div. A, title IV, § 491(d)(35), July 18, 1984, 98 Stat. 851, related to the transfers of certain annuities under qualified plans.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 406 of this title.

### § 2518. Disclaimers

#### (a) General rule

For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

#### (b) Qualified disclaimer defined

For purposes of subsection (a), the term “qualified disclaimer” means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—

(A) the day on which the transfer creating the interest in such person is made, or

(B) the day on which such person attains age 21,

(3) such person has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

#### (c) Other rules

For purposes of subsection (a)—

#### (1) Disclaimer of undivided portion of interest

A disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

#### (2) Powers

A power with respect to property shall be treated as an interest in such property.

#### (3) Certain transfers treated as disclaimers

A written transfer of the transferor's entire interest in the property—

(A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and

(B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)),

shall be treated as a qualified disclaimer.

(Added Pub. L. 94-455, title XX, §2009(b)(1), Oct. 4, 1976, 90 Stat. 1893; amended Pub. L. 95-600, title VII, §702(m)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97-34, title IV, §426(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97-448, title I, §104(e), Jan. 12, 1983, 96 Stat. 2384.)

#### AMENDMENTS

1983—Subsec. (c)(3). Pub. L. 97-448 substituted “A written transfer” for “For purposes of subsection (a), a written transfer”.

1981—Subsec. (c)(3). Pub. L. 97-34 added par. (3).

1978—Subsec. (b)(4). Pub. L. 95-600 inserted provision relating to spouse of decedent.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §426(b), Aug. 13, 1981, 95 Stat. 318, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(m)(2), Nov. 6, 1978, 92 Stat. 2935, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.”

#### EFFECTIVE DATE

Pub. L. 94-455, title XX, §2009(e)(2), Oct. 4, 1976, 90 Stat. 1896, provided that: “The amendments made by subsection (b) [enacting this section and section 2046 of this title and amending sections 2041, 2055, 2056, and 2514 of this title] shall apply with respect to transfers creating an interest in the person disclaiming made after December 31, 1976.”

### § 2519. Dispositions of certain life estates

#### (a) General rule

For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

#### (b) Property to which this subsection applies

This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

- (1) under section 2056 by reason of subsection (b)(7) thereof, or
- (2) under section 2523 by reason of subsection (f) thereof.

#### (c) Cross reference

**For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).**

(Added Pub. L. 97-34, title IV, §403(d)(3)(B)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L.

97-448, title I, §104(a)(3), (7), Jan. 12, 1983, 96 Stat. 2380, 2381.)

#### AMENDMENTS

1983—Pub. L. 97-448, §104(a)(3)(B), amended directory language of Pub. L. 97-34, §403(d)(3)(B)(i), to clarify that this section be inserted at end of subchapter B of chapter 12, rather than at end of subchapter B of chapter 11, and did not involve any change in text.

Subsec. (a). Pub. L. 97-448, §104(a)(3)(A), substituted “For purposes of this chapter and chapter 11, any disposition” for “Any disposition” and “treated as a transfer of all interests in such property other than the qualifying income interest” for “treated as a transfer of such property”.

Subsec. (c). Pub. L. 97-448, §104(a)(7), added subsec. (c).

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

### Subchapter C—Deductions

Sec.	
[2521.	Repealed.]
2522.	Charitable and similar gifts.
2523.	Gift to spouse.
2524.	Extent of deductions.

#### AMENDMENTS

1976—Pub. L. 94-455, title XX, §2001(c)(2)(B)(ii), Oct. 4, 1976, 90 Stat. 1853, struck out item 2521 “Specific exemption”.

### [§ 2521. Repealed. Pub. L. 94-455, title XX, § 2001(b)(3), Oct. 4, 1976, 90 Stat. 1849]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 410, allowed a deduction, in the case of a citizen or resident, an exemption of \$30,000, less amounts claimed and allowed for calendar year 1932 and calendar years intervening between that year and year for which tax is being computed.

### § 2522. Charitable and similar gifts

#### (a) Citizens or residents

In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any pri-

vate shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

**(b) Nonresidents**

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and 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, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts

or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

**(c) Disallowance of deductions in certain cases**

(1) No deduction shall be allowed under this section for a gift to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

**(4) Reforms to comply with paragraph (2)**

**(A) In general**

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

**(B) Rules similar to section 2055(e)(3) to apply**

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

**(5) Contributions to donor advised funds**

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined

<sup>1</sup> So in original. Probably should be "or".

under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

**(d) Special rule for irrevocable transfers of easements in real property**

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

**(e) Special rules for fractional gifts**

**(1) Denial of deduction in certain cases**

**(A) In general**

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

- (i) the taxpayer, or
- (ii) the taxpayer and the donee.

**(B) Exceptions**

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

**(2) Recapture of deduction in certain cases; addition to tax**

**(A) In general**

The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

- (i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

- (ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

**(B) Addition to tax**

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be in-

creased by 10 percent of the amount so recaptured.

**(C) Initial fractional contribution**

For purposes of this paragraph, the term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

**(f) Cross references**

**(1) For treatment of certain organizations providing child care, see section 501(k).**

**(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).**

**(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.**

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, §201(d)(3), (4)(C), (D), Dec. 30, 1969, 83 Stat. 561, 562; Pub. L. 91-614, title I, §102(c)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XII, §§1307(d)(1)(B)(iv), (v), 1313(b)(3), title XIX, §1902(a)(11), (12)(D), title XXI, §2124(e)(3), Oct. 4, 1976, 90 Stat. 1727, 1730, 1805, 1806, 1920; Pub. L. 97-34, title IV, §§423(b), 442(c), Aug. 13, 1981, 95 Stat. 317, 322; Pub. L. 97-248, title II, §286(b)(3), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-473, title II, §202(b)(7), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, §§1022(c), 1032(b)(3), July 18, 1984, 98 Stat. 1028, 1034; Pub. L. 99-514, title XIV, §1422(b), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, §10711(a)(5), (6), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 109-280, title XII, §§1218(c), 1234(c), Aug. 17, 2006, 120 Stat. 1082, 1101; Pub. L. 110-172, §§3(d)(2), 11(a)(16), Dec. 29, 2007, 121 Stat. 2474, 2485.)

**CODIFICATION**

Sections 1218(c) and 1234(c) of Pub. L. 109-280, which directed the amendment of section 2522 without specifying the act to be amended, were executed to this section, which is section 2522 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

**AMENDMENTS**

2007—Subsec. (e)(1)(A). Pub. L. 110-172, §11(a)(16)(A), in introductory provisions, substituted "all interests in the property are" for "all interest in the property is".

Subsec. (e)(2). Pub. L. 110-172, §3(d)(2)(A), (B), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(A) the fair market value of the property at the time of the initial fractional contribution, or

"(B) the fair market value of the property at the time of the additional contribution."

Subsec. (e)(2)(A)(i). Pub. L. 110-172, §11(a)(16)(B), substituted "interests" for "interest" and "on or before" for "before".

Subsec. (e)(2)(C). Pub. L. 110-172, §3(d)(2)(C), added subpar. (C).

Subsec. (e)(3). Pub. L. 110-172, §3(d)(2)(B), redesignated par. (3) as (2).

Subsec. (e)(4). Pub. L. 110-172, §3(d)(2)(A), struck out heading and text of par. (4). Text read as follows: "For purposes of this subsection—

“(A) ADDITIONAL CONTRIBUTION.—The term ‘additional contribution’ means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

“(B) INITIAL FRACTIONAL CONTRIBUTION.—The term ‘initial fractional contribution’ means, with respect to any donor, the first gift of an undivided portion of the donor’s entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).”

2006—Subsec. (c)(5). Pub. L. 109-280, §1234(c), added par. (5). See Codification note above.

Subsecs. (e), (f). Pub. L. 109-280, §1218(c), added subsec. (e) and redesignated former subsec. (e) as (f). See Codification note above.

1987—Subsecs. (a)(2), (b)(2), (3). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsecs. (d), (e). Pub. L. 99-514 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (c)(4). Pub. L. 98-369, §1022(c), added par. (4).

Subsec. (d). Pub. L. 98-369, §1032(b)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1983—Subsec. (d). Pub. L. 97-473 designated existing provisions as par. (1), substituted “bequests” for “gifts” second time appearing in par. (1) as so designated, and added par. (2).

1982—Subsec. (a). Pub. L. 97-248 inserted provision that rules similar to rules of section 501(j) apply for purposes of par. (2).

1981—Subsec. (a). Pub. L. 97-34, §442(c), substituted “year” for “quarter” in two places in provision preceding par. (1).

Subsec. (b). Pub. L. 97-34, §442(c), substituted “year” for “quarter” in provision preceding par. (1).

Subsec. (c)(3). Pub. L. 97-34, §423(b), added par. (3).

1976—Subsec. (a)(1). Pub. L. 94-455, §1902(a)(12)(D), struck out “Territory” after “any State”.

Subsec. (a)(2). Pub. L. 94-455, §§1307(d)(1)(B)(iv), 1313(b)(3), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “shareholder or individual” and inserted “or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)” after “or educational purposes”.

Subsec. (b)(1). Pub. L. 94-455, §1902(a)(12)(D), struck out “Territory” after “any State”.

Subsec. (b)(2). Pub. L. 94-455, §1307(d)(1)(B)(v), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “shareholder or individual”.

Subsec. (c)(2). Pub. L. 94-455, §2124(e)(3), substituted “(other than an interest described in section 170(f)(3)(B))” for “(other than a remainder interest in a personal residence or farm or an undivided portion of the donor’s entire interest in property)” after “an interest in property”.

Subsec. (d). Pub. L. 94-455, §1902(a)(11), substituted subsec. (d) for former subsec. (d), pars. (1) through (10), which dealt with cross references to specific exemptions and rules of construction for gifts to the United States and its instrumentalities.

1970—Pub. L. 91-614 substituted “quarter” for “year” in three places.

1969—Subsecs. (a)(2), (b)(2), (3). Pub. L. 91-172, §201(d)(4)(C), (D), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (c). Pub. L. 91-172, §201(d)(3), substituted substantive provisions for simple reference to sections 503

and 681 in which such substantive provisions were formerly set out.

1958—Subsec. (c). Pub. L. 85-866 substituted “503” for “504”.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 3(d)(2) of Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(c) of Pub. L. 109-280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

Amendment by section 1234(c) of Pub. L. 109-280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99-514, set out as a note under section 2055 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1022(c) of Pub. L. 98-369 applicable to reformations after Dec. 31, 1978, but inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98-369, set out as a note under section 2055 of this title.

Amendment by section 1032(b)(3) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(4) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97-248, set out as a note under section 501 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §423(c)(2), Aug. 13, 1981, 95 Stat. 317, provided that: “The amendment made by subsection (b) [amending this section] shall apply to transfers after December 31, 1981.”

Amendment by section 442(c) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2124(e)(3) of Pub. L. 94-455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94-455, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.



## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 91-172 applicable to gifts made after Dec. 31, 1969, except that the amendment of par. (2) of subsec. (c) applicable to gifts made after July 31, 1969, see section 201(g)(4)(D) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(C), (D) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

## CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For inclusion of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95-600, set out as a note under section 2055 of this title.

**§ 2523. Gift to spouse****(a) Allowance of deduction**

Where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

**(b) Life estate or other terminable interest**

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For purposes of this paragraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (e), where at the time of the transfer it is impossible to ascertain the particular person

or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

**(c) Interest in unidentified assets**

Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

**(d) Joint interests**

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

**(e) Life estate with power of appointment in donee spouse**

Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse—

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b)(1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events. For purposes of this subsection, the term "specific portion" only includes a portion determined on a fractional or percentage basis.

**(f) Election with respect to life estate for donee spouse****(1) In general**

In the case of qualified terminable interest property—

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as

retained in the donor or transferred to any person other than the donee spouse.

**(2) Qualified terminable interest property**

For purposes of this subsection, the term “qualified terminable interest property” means any property—

(A) which is transferred by the donor spouse,

(B) in which the donee spouse has a qualifying income interest for life, and

(C) to which an election under this subsection applies.

**(3) Certain rules made applicable**

For purposes of this subsection, rules similar to the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply and the rules of section 2056(b)(10) shall apply.

**(4) Election**

**(A) Time and manner**

An election under this subsection with respect to any property shall be made on or before the date prescribed by section 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to section 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe.

**(B) Election irrevocable**

An election under this subsection, once made, shall be irrevocable.

**(5) Treatment of interest retained by donor spouse**

**(A) In general**

In the case of any qualified terminable interest property—

(i) such property shall not be includible in the gross estate of the donor spouse, and

(ii) any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for purposes of this chapter.

**(B) Subparagraph (A) not to apply after transfer by donee spouse**

Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

**(6) Treatment of joint and survivor annuities**

In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

(D) if the donee spouse dies before the donor spouse, no amount shall be includible

in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.

**(g) Special rule for charitable remainder trusts**

**(1) In general**

If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified charitable remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

**(2) Definitions**

For purposes of paragraph (1), the term “noncharitable beneficiary” and “qualified charitable remainder trust” have the meanings given to such terms by section 2056(b)(8)(B).<sup>1</sup>

**(h) Denial of double deduction**

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

**(i) Disallowance of marital deduction where spouse not citizen**

If the spouse of the donor is not a citizen of the United States—

(1) no deduction shall be allowed under this section,

(2) section 2503(b) shall be applied with respect to gifts which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1) by substituting “\$100,000” for “\$10,000”, and

(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply.

This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 412; Pub. L. 91-614, title I, §102(c)(3), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XIX, §1902(a)(12)(E), title XX, §2002(b), Oct. 4, 1976, 90 Stat. 1806, 1854; Pub. L. 97-34, title IV, §403(b)(1), (2), (d)(2), Aug. 13, 1981, 95 Stat. 301, 303; Pub. L. 97-448, title I, §104(a)(2)(B), (4)–(6), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 99-514, title XVIII, §1879(n)(1), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 100-647, title V, §5033(b), title VI, §6152(b), Nov. 10, 1988, 102 Stat. 3672, 3725; Pub. L. 101-239, title VII, §7815(d)(1)(A), (2), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 101-508, title XI, §11702(g)(1), Nov. 5, 1990, 104 Stat. 1388-515; Pub. L. 102-486, title XIX, §1941(b), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105-34, title XVI, §1604(g)(4), Aug. 5, 1997, 111 Stat. 1099.)

<sup>1</sup> See References in Text note below.

## INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

## REFERENCES IN TEXT

Section 2056 of this title, referred to in subsec. (g)(2), was subsequently amended, and section 2056(b)(8)(B) no longer defines the term “noncharitable beneficiary”.

Sections 2515 and 2515A, referred to in subsec. (i)(3), were repealed by Pub. L. 97-34, title IV, § 403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302.

## AMENDMENTS

1997—Subsec. (g)(1). Pub. L. 105-34 substituted “qualified charitable remainder trust” for “qualified remainder trust”.

1992—Subsec. (e). Pub. L. 102-486, § 1941(b)(1), in closing provisions, inserted at end “For purposes of this subsection, the term ‘specific portion’ only includes a portion determined on a fractional or percentage basis.”

Subsec. (f)(3). Pub. L. 102-486, § 1941(b)(2), inserted before period at end “and the rules of section 2056(b)(10) shall apply”.

1990—Subsec. (i). Pub. L. 101-508 inserted at end “This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).”

1989—Subsec. (a). Pub. L. 101-239, § 7815(d)(2), struck out “who is a citizen or resident” after “Where a donor”.

Subsec. (i)(2). Pub. L. 101-239, § 7815(d)(1)(A), substituted “which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1)” for “made by the donor to such spouse”.

1988—Subsec. (f)(6). Pub. L. 100-647, § 6152(b), added par. (6).

Subsec. (i). Pub. L. 100-647, § 5033(b), added subsec. (i).  
1986—Subsec. (f)(4)(A). Pub. L. 99-514 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “An election under this subsection with respect to any property shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe.”

1983—Subsec. (f)(3). Pub. L. 97-448, § 104(a)(6), substituted “rules similar to the rules of clauses (ii)” for “the rules of clauses (ii)”.

Subsec. (f)(4). Pub. L. 97-448, § 104(a)(4), divided existing provisions into subpars. (A) and (B), in subpar. (A) as so designated substituted “shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe” for “shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred”, and in subpar. (B) as so designated substituted “An election under this subsection” for “Such an election”.

Subsec. (f)(5). Pub. L. 97-448, § 104(a)(5), added par. (5).

Subsec. (h). Pub. L. 97-448, § 104(a)(2)(B), added subsec. (h).

1981—Subsec. (a). Pub. L. 97-34, § 403(b)(1), struck out “(1) In general” designation for existing text and struck out par. (2) which declared that the aggregate of the allowed deductions for any calendar quarter should not exceed the sum of \$100,000 reduced, but not below zero, by the aggregate of the allowed deductions for preceding calendar quarters beginning after Dec. 31, 1976, plus 50 percent of the lesser of the amount of the allowed deductions for such calendar quarter, determined without regard to par. (2), or the amount, if any, by which the aggregate determined under cl. (i) of par. (2) for the calendar quarter and for each preceding calendar quarter beginning after Dec. 31, 1976, exceeds \$200,000.

Subsec. (f). Pub. L. 97-34, § 403(b)(2), (d)(2), substituted provision relating to election with respect to life estate for donee spouse for provision relating to community property.

Subsec. (g). Pub. L. 97-34, § 403(d)(2), added subsec. (g).  
1976—Subsec. (a). Pub. L. 94-455 designated existing provisions as par. (1), struck out “one-half of” after “interest equal to”, and added par. (2) relating to limitations on aggregate amount of deductions.

Subsec. (f)(1). Pub. L. 94-455, § 1902(a)(12)(E), struck out “Territory” after “any State”.

1970—Subsec. (a). Pub. L. 91-614 substituted “quarter” for “year” in two places.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to gifts made after Oct. 24, 1992, see section 1941(c)(2) of Pub. L. 102-486, set out as a note under section 2056 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

## EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, § 7815(d)(1)(B), Dec. 19, 1989, 103 Stat. 2415, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply with respect to gifts made after June 29, 1989.”

Amendment by section 7815(d)(2) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title V, § 5033(d)(2), Nov. 10, 1988, 102 Stat. 3673, provided that: “The amendments made by subsection (b) [amending this section] shall apply to gifts on or after July 14, 1988.”

Amendment by section 6152(b) of Pub. L. 100-647 applicable to transfers after Dec. 31, 1981, and, in the case of any estate or gift tax return filed before Nov. 10, 1988, such amendment inapplicable to the extent it would be inconsistent with the treatment of the annuity on such return unless executor or donor otherwise elects before the day 2 years after Nov. 10, 1988, the time for making such an election not to expire before such date, see section 6152(c), of Pub. L. 100-647, set out as a note under section 2056 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVIII, § 1879(n)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers made after December 31, 1985.”

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as a note under section 2056 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, § 2002(d)(2), Oct. 4, 1976, 90 Stat. 1856, provided that: “The amendment made by subsection (b) [amending this section] shall apply to gifts made after December 31, 1976.”

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

## APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100-647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100-647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101-239, set out as a note under section 2056 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR CERTAIN TRANSFERS IN  
OCTOBER 1984

Pub. L. 99-514, title XVIII, § 1879(n)(3), Oct. 22, 1986, 100 Stat. 2910, provided that: “An election under section 2523(f) of the Internal Revenue Code of 1954 [now 1986] with respect to an interest in property which—

“(A) was transferred during October 1984, and

“(B) was transferred pursuant to a trust instrument stating that the grantor’s intention was that the property of the trust would constitute qualified terminable interest property as to which a Federal gift tax marital deduction would be allowed upon the grantor’s election,

shall be made on the return of tax imposed by section 2501 of such Code for the calendar year 1984 which is filed on or before the due date of such return or, if a timely return is not filed, on the first such return filed after the due date of such return and before December 31, 1986.”

**§ 2524. Extent of deductions**

The deductions provided in sections 2522 and 2523 shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 414.)

**CHAPTER 13—TAX ON GENERATION-  
SKIPPING TRANSFERS**

Subchapter	Sec. <sup>1</sup>
A. Tax imposed .....	2601
B. Generation-skipping transfers .....	2611
C. Taxable amount .....	2621
D. GST exemption .....	2631

<sup>1</sup> Section numbers editorially supplied.

E. Applicable rate; inclusion ratio .....	2641
F. Other definitions and special rules .....	2651
G. Administration .....	2661

## AMENDMENTS

1986—Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2717, struck out “CERTAIN” after “TAX ON” in chapter heading, substituted “Generation-skipping transfers” for “Definitions and special rules” in item for subchapter B and “Taxable amount” for “Administration” in item for subchapter C, and added items for subchapters D, E, and F.

**Subchapter A—Tax Imposed**

Sec.	
2601.	Tax imposed.
2602.	Amount of tax.
2603.	Liability for tax.
[2604.]	Repealed.]

## AMENDMENTS

2014—Pub. L. 113-295, div. A, title II, § 221(a)(95)(B)(i), Dec. 19, 2014, 128 Stat. 4051, which directed amendment of subchapter A of chapter 13 of this title by striking out item 2604 in the table of sections for “such subpart”, was executed by striking out item 2604 “Credit for certain State taxes” in the table of sections for this subchapter, to reflect the probable intent of Congress.

2004—Pub. L. 108-311, title IV, § 408(a)(21), Oct. 4, 2004, 118 Stat. 1192, added item 2604.

2001—Pub. L. 107-16, title V, § 532(c)(15), June 7, 2001, 115 Stat. 75, struck out item 2604 “Credit for certain State taxes”.

1986—Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2717, in amending analysis of subchapter A generally, added item 2604.

**§ 2601. Tax imposed**

A tax is hereby imposed on every generation-skipping transfer (within the meaning of subchapter B).

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718.)

## AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting “(within the meaning of subchapter B)” for “in the amount determined under section 2602”.

## EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XIV, § 1433, Oct. 22, 1986, 100 Stat. 2731, as amended by Pub. L. 100-647, title I, § 1014(h)(1)-(3)(A), (4), Nov. 10, 1988, 102 Stat. 3567, 3568, provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle D (§§ 1431-1433) of title XIV of Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611 of the Internal Revenue Code of 1986) made after the date of the enactment of this Act [Oct. 22, 1986].

“(b) SPECIAL RULES.—

“(1) TREATMENT OF CERTAIN INTER VIVOS TRANSFERS MADE AFTER SEPTEMBER 25, 1985.—For purposes of subsection (a) (and chapter 13 of the Internal Revenue Code of 1986 as amended by this part), any inter vivos transfer after September 25, 1985, and on or before the date of the enactment of this Act [Oct. 22, 1986] shall be treated as if it were made on the 1st day after the date of enactment of this Act.

“(2) EXCEPTIONS.—The amendments made by this subtitle shall not apply to—

“(A) any generation-skipping transfer under a trust which was irrevocable on September 25, 1985,

but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added),

“(B) any generation-skipping transfer under a will or revocable trust executed before the date of the enactment of this Act [Oct. 22, 1986] if the decedent dies before January 1, 1987, and

“(C) any generation-skipping transfer—

“(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act [Oct. 22, 1986]), or reinvestments thereof, or

“(ii) which is a direct skip which occurs by reason of the death of any decedent;

but only if such decedent was, on the date of the enactment of this Act [Oct. 22, 1986], under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

“(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

“(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term ‘direct skip’ shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed \$2,000,000.

“(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

“(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

“(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

“(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

“(C) COORDINATION WITH SECTION 2653(a) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

“(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms ‘taxable termination’ and ‘taxable distribution’ shall not include any transfer which would be a direct skip but for subparagraph (A).

“(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor.

“(c) REPEAL OF EXISTING TAX ON GENERATION-SKIPPING TRANSFERS.—

“(1) IN GENERAL.—In the case of any tax imposed by chapter 13 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), such tax (including interest, additions to tax, and additional amounts) shall not be assessed and if assessed, the assessment shall be abated, and if collected, shall be credited or refunded (with interest) as an overpayment.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of paragraph (1) is barred by any

law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.

“(d) ELECTION FOR CERTAIN TRANSFERS BENEFITING GRANDCHILD.—

“(1) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986 (as amended by this Act) and subsection (b) of this section, any transfer in trust for the benefit of a grandchild of a transferor shall be treated as a direct skip to such grandchild if—

“(A) the transfer occurs before the date of enactment of this Act [Oct. 22, 1986],

“(B) the transfer would be a direct skip to a grandchild except for the fact that the trust instrument provides that, if the grandchild dies before vesting of the interest transferred, the interest is transferred to the grandchild's heir (rather than the grandchild's estate), and

“(C) an election under this subsection applies to such transfer.

Any transfer treated as a direct skip by reason of the preceding sentence shall be subject to Federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate.

“(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence.”

[Pub. L. 101-508, title XI, §11703(c)(3), Nov. 5, 1990, 104 Stat. 1388-517, provided that: “Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 [Pub. L. 99-514, set out above] shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act [probably means subtitle D (§§1431-1433) of title XIV of Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] to the extent such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990.”]

[Pub. L. 100-647, title I, §1014(h)(3)(B), Nov. 10, 1988, 102 Stat. 3568, provided that: “Clause (iii) of section 1443(b)(3)(B) [1433(b)(3)(B)] of the Reform Act [Pub. L. 99-514, set out above] (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.”]

[Pub. L. 100-647, title I, §1014(h)(5), Nov. 10, 1988, 102 Stat. 3568, provided that: “Subparagraph (C) of section 1433(b)(2) of the Reform Act [Pub. L. 99-514, set out above] shall not exempt any direct skip from the amendments made by subtitle D of title XIV of the Reform Act [Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] if—

[“(A) such direct skip results from the application of section 2044 of the 1986 Code, and

[“(B) such direct skip is attributable to property transferred to the trust after October 21, 1988.”]

EFFECTIVE DATE

Pub. L. 94-455, title XX, §2006(c), Oct. 4, 1976, 90 Stat. 1889, as amended by Pub. L. 95-600, title VII, §702(n)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97-34, title IV, §428, Aug. 13, 1981, 95 Stat. 319; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this chapter and amending sections 303, 691, and 2013 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal

Revenue Code of 1986 [formerly I.R.C. 1954]) made after June 11, 1976.

“(2) EXCEPTIONS.—The amendments made by this section shall not apply to any generation-skipping transfer—

“(A) under a trust which was irrevocable on June 11, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after June 11, 1976, or

“(B) in the case of a decedent dying before January 1, 1983, pursuant to a will (or revocable trust) which was in existence on June 11, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, any generation-skipping transfer.

For purposes of subparagraph (B), if the decedent on June 11, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

“(3) TRUST EQUIVALENTS.—For purposes of paragraph (2), in the case of a trust equivalent within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1986, the provisions of such subsection (d) shall apply.”

[Amendment of section 2006(c) of Pub. L. 94-455, set out above, by section 702(n)(1) of Pub. L. 95-600, effective Oct. 4, 1976, see section 702(n)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2613 of this title.]

### § 2602. Amount of tax

The amount of the tax imposed by section 2601 is—

- (1) the taxable amount (determined under subchapter C), multiplied by
- (2) the applicable rate (determined under subchapter E).

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 95-600, title VII, § 702(h)(2), (n)(4), Nov. 6, 1978, 92 Stat. 2931, 2936; Pub. L. 97-34, title IV, § 403(a)(2)(B), Aug. 13, 1981, 95 Stat. 301; Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718.)

#### AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions that amount of tax imposed by section 2601 is the taxable amount (determined under subchapter C), multiplied by the applicable rate (determined under subchapter E) for former provisions which set out in detail the calculations and formulae for determining amount of tax imposed by section 2601.

1981—Subsec. (c)(5). Pub. L. 97-34 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) relating to adjustments to marital deduction and providing that if the generation-skipping transfer occurs at the same time as, or within 9 months after, the death of the deemed transferor, for purposes of section 2056, relating to bequests, etc., to surviving spouse, the value of the gross estate of the deemed transferor shall be deemed to be increased by the amount of such transfer.

1978—Subsec. (a)(1)(C). Pub. L. 95-600, § 702(h)(2), inserted “, as modified by section 2001(e)” after “within the meaning of section 2001(b)”.

Subsec. (d)(1)(A). Pub. L. 95-600, § 702(n)(4)(A), inserted “(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)” after “such deemed transferor”.

Subsec. (d)(2)(A). Pub. L. 95-600, § 702(n)(4)(B), inserted “(or beneficiary)” after “the deemed transferor”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made

after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 702(h)(2) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, except that such amendment shall not apply to transfers made before Jan. 1, 1977, see section 702(h)(3) of Pub. L. 95-600, set out as a note under section 2001 of this title.

Amendment by section 702(n)(4) of Pub. L. 95-600 effective as if included in this chapter as added by section 2006 of Pub. L. 94-455, see section 702(n)(5) of Pub. L. 95-600, set out as a note under section 2613 of this title.

### § 2603. Liability for tax

#### (a) Personal liability

##### (1) Taxable distributions

In the case of a taxable distribution, the tax imposed by section 2601 shall be paid by the transferee.

##### (2) Taxable termination

In the case of a taxable termination or a direct skip from a trust, the tax shall be paid by the trustee.

##### (3) Direct skip

In the case of a direct skip (other than a direct skip from a trust), the tax shall be paid by the transferor.

#### (b) Source of tax

Unless otherwise directed pursuant to the governing instrument by specific reference to the tax imposed by this chapter, the tax imposed by this chapter on a generation-skipping transfer shall be charged to the property constituting such transfer.

#### (c) Cross reference

**For provisions making estate and gift tax provisions with respect to transferee liability, liens, and related matters applicable to the tax imposed by section 2601, see section 2661.**

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1881; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718.)

#### AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting tax liability provisions consisting of language placing liability, under different circumstances, on the transferee, the trustee, or the transferor, the source of the tax, and a cross reference to section 2661 for former provisions which covered the question of liability for tax with language covering the trustee and the distributee, the limitation on personal liability of the trustee who relied on certain information furnished by the Secretary, the limitation on personal liability of distributee, and the lien on property transferred until the tax was paid in full or became unenforceable by reason of lapse of time.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made

after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**[§ 2604. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(95)(B)(i), Dec. 19, 2014, 128 Stat. 4051]**

Section, added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718; amended Pub. L. 107-16, title V, § 532(c)(10), June 7, 2001, 115 Stat. 75, related to credit for certain State generation-skipping transfer taxes.

**EFFECTIVE DATE OF REPEAL**

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

**Subchapter B—Generation-Skipping Transfers**

Sec.

- 2611. Generation-skipping transfer defined.
- 2612. Taxable termination; taxable distribution; direct skip.
- 2613. Skip person and non-skip person defined.

**AMENDMENTS**

1986—Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718, substituted “Generation-Skipping Transfers” for “Definitions and Special Rules” in subchapter heading, substituted “Generation-skipping transfer defined” for “Generation-skipping transfer” in item 2611, “Taxable termination; taxable distribution; direct skip” for “Deemed transferor” in item 2612, and “Skip person and non-skip person defined” for “Other definitions” in item 2613, and struck out item 2614 “Special rules”.

**§ 2611. Generation-skipping transfer defined**

**(a) In general**

For purposes of this chapter, the term “generation-skipping transfer” means—

- (1) a taxable distribution,
- (2) a taxable termination, and
- (3) a direct skip.

**(b) Certain transfers excluded**

The term “generation-skipping transfer” does not include—

- (1) any transfer which, if made inter vivos by an individual, would not be treated as a taxable gift by reason of section 2503(e) (relating to exclusion of certain transfers for educational or medical expenses), and
- (2) any transfer to the extent—
  - (A) the property transferred was subject to a prior tax imposed under this chapter,
  - (B) the transferee in the prior transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the transferee in this transfer, and
  - (C) such transfers do not have the effect of avoiding tax under this chapter with respect to any transfer.

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1882; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718; Pub. L. 100-647, title I, §§ 1014(g)(1), (2), 1018(u)(43), Nov. 10, 1988, 102 Stat. 3562, 3592.)

**AMENDMENTS**

1988—Subsec. (a). Pub. L. 100-647, §§ 1014(g)(1), 1018(u)(43), substituted “generation-skipping transfer”

for “generation-skipping transfers” and “means” for “mean”.

Subsec. (b). Pub. L. 100-647, § 1014(g)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: “any transfer (other than a direct skip) from a trust, to the extent such transfer is subject to a tax imposed by chapter 11 or 12 with respect to a person in the 1st generation below that of the grantor, and”.

1986—Pub. L. 99-514 amended section generally, substituting provisions defining “generation-skipping transfers” and what that term does not include, for former provisions which defined “generation-skipping transfer”, “transfer”, and “generation-skipping trust”, contained provisions to be used in determining the ascertainment of generation, and provided for a generation-skipping trust equivalent.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2612. Taxable termination; taxable distribution; direct skip**

**(a) Taxable termination**

**(1) General rule**

For purposes of this chapter, the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless—

(A) immediately after such termination, a non-skip person has an interest in such property, or

(B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

**(2) Certain partial terminations treated as taxable**

If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust’s assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.

**(b) Taxable distribution**

For purposes of this chapter, the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

**(c) Direct skip**

For purposes of this chapter—

**(1) In general**

The term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

**(2) Look-thru rules not to apply**

Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(f)(2) shall not apply.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1883; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2719; Pub. L. 100-647, title I, §1014(g)(5)(B), (7), (15), Nov. 10, 1988, 102 Stat. 3564-3566; Pub. L. 105-34, title V, §511(b), Aug. 5, 1997, 111 Stat. 861.)

**AMENDMENTS**

1997—Subsec. (c)(2). Pub. L. 105-34, §511(b)(2), substituted “section 2651(f)(2)” for “section 2651(e)(2)”.

Pub. L. 105-34, §511(b)(1), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “For purposes of determining whether any transfer is a direct skip, if—

“(A) an individual is a grandchild of the transferor (or the transferor’s spouse or former spouse), and

“(B) as of the time of the transfer, the parent of such individual who is a lineal descendant of the transferor (or the transferor’s spouse or former spouse) is dead,

such individual shall be treated as if such individual were a child of the transferor and all of that grandchild’s children shall be treated as if they were grandchildren of the transferor. In the case of lineal descendants below a grandchild, the preceding sentence may be reapplied. If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

Subsec. (c)(3). Pub. L. 105-34, §511(b)(1), redesignated par. (3) as (2).

1988—Subsec. (a)(2). Pub. L. 100-647, §1014(g)(15), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “If, upon the termination of an interest in property held in a trust, a specified portion of the trust assets are distributed to skip persons who are lineal descendants of the holder of such interest (or to 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.”

Subsec. (c)(2). Pub. L. 100-647, §1014(g)(7), in closing provisions, inserted at end “If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

Subsec. (c)(3). Pub. L. 100-647, §1014(g)(5)(B), added par. (3).

1986—Pub. L. 99-514 amended section generally, substituting provisions covering definition and application of “taxable termination”, “taxable distribution”, and “direct skip” for former provisions which indicated who the “deemed transferor” would be for purposes of this chapter and that, for purposes of determining the person deemed the transferor, a parent related to the grantor of a trust by blood or adoption was to be deemed more closely related than a parent related to a grantor by marriage.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-34, title V, §511(c), Aug. 5, 1997, 111 Stat. 861, provided that: “The amendments made by this section [amending this section and section 2651 of this title] shall apply to terminations, distributions, and transfers occurring after December 31, 1997.”

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which

such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2613. Skip person and non-skip person defined****(a) Skip person**

For purposes of this chapter, the term “skip person” means—

(1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

(2) a trust—

(A) if all interests in such trust are held by skip persons, or

(B) if—

(i) there is no person holding an interest in such trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

**(b) Non-skip person**

For purposes of this chapter, the term “non-skip person” means any person who is not a skip person.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1884; amended Pub. L. 95-600, title VII, §702(n)(2), (3), Nov. 6, 1978, 92 Stat. 2935, 2936; Pub. L. 96-222, title I, §107(a)(2)(B), Apr. 1, 1980, 94 Stat. 222; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720; Pub. L. 100-647, title I, §1014(g)(5)(A), Nov. 10, 1988, 102 Stat. 3564.)

**AMENDMENTS**

1988—Subsec. (a)(1). Pub. L. 100-647 inserted “natural” before “person”.

1986—Pub. L. 99-514 amended section generally, substituting definitions of “skip person” and “non-skip person” for former provisions which defined and applied the terms “taxable distribution”, “taxable termination”, “younger generation beneficiary”, and “related or subordinate trustee”.

1980—Subsec. (e)(2)(A)(i). Pub. L. 96-222, §107(a)(2)(B)(i), inserted “(other than as a potential appointee under a power of appointment held by another)” after “trust”.

Subsec. (e)(2)(B). Pub. L. 96-222, §107(a)(2)(B)(ii), redesignated cls. (iii) to (v) as (iv) to (vi), added cl. (iii), and struck out cl. (vi) which related to an employee of a corporation in which the grantor or any beneficiary of the trust is an executive.

1978—Subsec. (b)(2)(B). Pub. L. 95-600, §702(n)(3), substituted “a present interest and a present power” for “an interest and a power” and “present interest or present power” for “interest or power” wherever appearing.

Subsec. (e). Pub. L. 95-600, §702(n)(2), inserted provisions relating to powers of independent trustees and definition of a related or subordinate trustee.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made



after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(n)(5), Nov. 6, 1978, 92 Stat. 2936, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 2602 of this title, and provisions set out as a note under section 2601 of this title] shall take effect as if included in chapter 13 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2006 of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, §2006, Oct. 4, 1976, 90 Stat. 1879].

“(B) The amendment made by paragraph (1) [amending provisions set out as a note under section 2601 of this title] shall take effect on October 4, 1976.”

#### [§ 2614. Omitted]

#### CODIFICATION

Section, added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 95-600, title VII, §702(c)(1)(B), Nov. 6, 1978, 92 Stat. 2926; Pub. L. 96-223, title IV, §401(c)(3), Apr. 2, 1980, 94 Stat. 300, related to special rules for generation-skipping transfers, prior to the general revision of this chapter by Pub. L. 99-514, §1431(a).

#### Subchapter C—Taxable Amount

Sec.	
2621.	Taxable amount in case of taxable distribution.
2622.	Taxable amount in case of taxable termination.
2623.	Taxable amount in case of direct skip.
2624.	Valuation.

#### AMENDMENTS

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720, substituted “Taxable Amount” for “Administration” in subchapter heading, substituted “Taxable amount in case of taxable distribution” for “Administration” in item 2621 and “Taxable amount in case of taxable termination” for “Regulations” in item 2622, and added items 2623 and 2624.

#### § 2621. Taxable amount in case of taxable distribution

##### (a) In general

For purposes of this chapter, the taxable amount in the case of any taxable distribution shall be—

- (1) the value of the property received by the transferee, reduced by
- (2) any expense incurred by the transferee in connection with the determination, collection, or refund of the tax imposed by this chapter with respect to such distribution.

##### (b) Payment of GST tax treated as taxable distribution

For purposes of this chapter, if any of the tax imposed by this chapter with respect to any taxable distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a taxable distribution.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 97-34, title IV, §422(e)(4), Aug. 13, 1981, 95 Stat. 316; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720.)

#### AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to taxable amount in case of a taxable distribution for former provisions which related generally to administration of this chapter. See section 2661 of this title.

1981—Subsec. (b). Pub. L. 97-34 substituted “Section 6166” for “Sections 6166 and 6166A” in heading and “section 6166 (relating to extension of time)” for “sections 6166 and 6166A (relating to extensions of time)” in text.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

#### § 2622. Taxable amount in case of taxable termination

##### (a) In general

For purposes of this chapter, the taxable amount in the case of a taxable termination shall be—

- (1) the value of all property with respect to which the taxable termination has occurred, reduced by
- (2) any deduction allowed under subsection (b).

##### (b) Deduction for certain expenses

For purposes of subsection (a), there shall be allowed a deduction similar to the deduction allowed by section 2053 (relating to expenses, indebtedness, and taxes) for amounts attributable to the property with respect to which the taxable termination has occurred.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1888; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720.)

#### AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to taxable amount in case of a taxable termination for former provisions which authorized the Secretary to promulgate regulations. See section 2663 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### § 2623. Taxable amount in case of direct skip

For purposes of this chapter, the taxable amount in the case of a direct skip shall be the value of the property received by the transferee.

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721.)

## EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2624. Valuation****(a) General rule**

Except as otherwise provided in this chapter, property shall be valued as of the time of the generation-skipping transfer.

**(b) Alternate valuation and special use valuation elections apply to certain direct skips**

In the case of any direct skip of property which is included in the transferor's gross estate, the value of such property for purposes of this chapter shall be the same as its value for purposes of chapter 11 (determined with regard to sections 2032 and 2032A).

**(c) Alternate valuation election permitted in the case of taxable terminations occurring at death**

If 1 or more taxable terminations with respect to the same trust occur at the same time as and as a result of the death of an individual, an election may be made to value all of the property included in such terminations in accordance with section 2032.

**(d) Reduction for consideration provided by transferee**

For purposes of this chapter, the value of the property transferred shall be reduced by the amount of any consideration provided by the transferee.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721.)

## EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**Subchapter D—GST Exemption**

Sec.

2631. GST exemption.

2632. Special rules for allocation of GST exemption.

**§ 2631. GST exemption****(a) General rule**

For purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

**(b) Allocations irrevocable**

Any allocation under subsection (a), once made, shall be irrevocable.

**(c) GST exemption amount**

For purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under section 2010(c) for such calendar year.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 105-34, title V, § 501(d), Aug. 5, 1997, 111 Stat. 846; Pub. L. 105-206, title VI, § 6007(a)(1), July 22, 1998, 112 Stat. 806; Pub. L. 107-16, title V, § 521(c), June 7, 2001, 115 Stat. 72; Pub. L. 111-312, title III, § 303(b)(2), Dec. 17, 2010, 124 Stat. 3303.)

## AMENDMENTS

2010—Subsec. (c). Pub. L. 111-312 substituted “the basic exclusion amount” for “the applicable exclusion amount”.

2001—Subsec. (a). Pub. L. 107-16, § 521(c)(1), substituted “amount” for “of \$1,000,000”.

Subsec. (c). Pub. L. 107-16, § 521(c)(2), amended heading and text of subsec. (c) generally, substituting provisions relating to the GST exemption amount for any calendar year for provisions which related to inflation adjustment of the \$1,000,000 amount contained in subsec. (a) in the case of any calendar year after 1998 and applicability of any increase for any such calendar year.

1998—Subsec. (c). Pub. L. 105-206 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In the case of an individual who dies in any calendar year after 1998, the \$1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

“(1) \$1,000,000, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 1997’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.”

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to generation-skipping transfers after Dec. 31, 2010, see section 303(c)(2) of Pub. L. 111-312, set out as a note under section 2010 of this title.

## EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2003, see section 521(e)(3) of Pub. L. 107-16, set out as a note under section 2010 of this title.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

## EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2632. Special rules for allocation of GST exemption****(a) Time and manner of allocation****(1) Time**

Any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

**(2) Manner**

The Secretary shall prescribe by forms or regulations the manner in which any allocation referred to in paragraph (1) is to be made.

**(b) Deemed allocation to certain lifetime direct skips****(1) In general**

If any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

**(2) Unused portion**

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under paragraph (1) or subsection (c)(1)).

**(3) Subsection not to apply in certain cases**

An individual may elect to have this subsection not apply to a transfer.

**(c) Deemed allocation to certain lifetime transfers to GST trusts****(1) In general**

If any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

**(2) Unused portion**

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been—

- (A) allocated by such individual,
- (B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or
- (C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

**(3) Definitions****(A) Indirect skip**

For purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

**(B) GST trust**

The term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless—

- (i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—

- (I) before the date that the individual attains age 46,

- (II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

- (III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46,

- (ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,

- (iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals,

- (iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,

- (v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or

- (vi) the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

**(4) Automatic allocations to certain GST trusts**

For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair

market value of the trust property at the close of the estate tax inclusion period.

**(5) Applicability and effect**

**(A) In general**

An individual—

(i) may elect to have this subsection not apply to—

(I) an indirect skip, or

(II) any or all transfers made by such individual to a particular trust, and

(ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

**(B) Elections**

**(i) Elections with respect to indirect skips**

An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

**(ii) Other elections**

An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

**(d) Retroactive allocations**

**(1) In general**

If—

(A) a non-skip person has an interest or a future interest in a trust to which any transfer has been made,

(B) such person—

(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor's spouse or former spouse, and

(ii) is assigned to a generation below the generation assignment of the transferor, and

(C) such person predeceases the transferor, then the transferor may make an allocation of any of such transferor's unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

**(2) Special rules**

If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person's death occurred—

(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

(B) such allocation shall be effective immediately before such death, and

(C) the amount of the transferor's unused GST exemption available to be allocated shall be determined immediately before such death.

**(3) Future interest**

For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future.

**(e) Allocation of unused GST exemption**

**(1) In general**

Any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (a) shall be deemed to be allocated as follows—

(A) first, to property which is the subject of a direct skip occurring at such individual's death, and

(B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

**(2) Allocation within categories**

**(A) In general**

The allocation under paragraph (1) shall be made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

**(B) Nonexempt portion**

For purposes of subparagraph (A), the term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 100-647, title I, § 1014(g)(16), Nov. 10, 1988, 102 Stat. 3566; Pub. L. 107-16, title V, § 561(a), (b), June 7, 2001, 115 Stat. 86, 89.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107-16, § 561(b), substituted "or subsection (c)(1)" for "with respect to a prior direct skip".

Subsecs. (c) to (e). Pub. L. 107-16, § 561(a), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1988—Subsec. (b)(2). Pub. L. 100-647 substituted "paragraph (1) with respect to a prior direct skip" for "paragraph (1) with respect to a prior direct skip".

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 561(c), June 7, 2001, 115 Stat. 89, provided that:

"(1) DEEMED ALLOCATION.—Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b) [amending this section], shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

"(2) RETROACTIVE ALLOCATIONS.—Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### Subchapter E—Applicable Rate; Inclusion Ratio

Sec.

2641. Applicable rate.

2642. Inclusion ratio.

#### § 2641. Applicable rate

##### (a) General rule

For purposes of this chapter, the term “applicable rate” means, with respect to any generation-skipping transfer, the product of—

- (1) the maximum Federal estate tax rate, and
- (2) the inclusion ratio with respect to the transfer.

##### (b) Maximum Federal estate tax rate

For purposes of subsection (a), the term “maximum Federal estate tax rate” means the maximum rate imposed by section 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722.)

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX

Pub. L. 111-312, title III, § 302(c), Dec. 17, 2010, 124 Stat. 3302, provided that: “In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.”

#### § 2642. Inclusion ratio

##### (a) Inclusion ratio defined

For purposes of this chapter—

##### (1) In general

Except as otherwise provided in this section, the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over—

- (A) except as provided in subparagraph (B), the applicable fraction determined for the trust from which such transfer is made, or
- (B) in the case of a direct skip, the applicable fraction determined for such skip.

##### (2) Applicable fraction

For purposes of paragraph (1), the applicable fraction is a fraction—

- (A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and

(B) the denominator of which is—

- (i) the value of the property transferred to the trust (or involved in the direct skip), reduced by
- (ii) the sum of—
  - (I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and
  - (II) any charitable deduction allowed under section 2055 or 2522 with respect to such property.

### (3) Severing of trusts

#### (A) In general

If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

#### (B) Qualified severance

For purposes of subparagraph (A)—

##### (i) In general

The term “qualified severance” means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if—

- (I) the single trust was divided on a fractional basis, and
- (II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

##### (ii) Trusts with inclusion ratio greater than zero

If a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

##### (iii) Regulations

The term “qualified severance” includes any other severance permitted under regulations prescribed by the Secretary.

### (C) Timing and manner of severances

A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.

### (b) Valuation rules, etc.

Except as provided in subsection (f)—

#### (1) Gifts for which gift tax return filed or deemed allocation made

If the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1)—

- (A) the value of such property for purposes of subsection (a) shall be its value as finally

determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and

(B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

**(2) Transfers and allocations at or after death**

**(A) Transfers at death**

If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.

**(B) Allocations to property transferred at death of transferor**

Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

**(3) Allocations to inter vivos transfers not made on timely filed gift tax return**

If any allocation of the GST exemption to any property not transferred as a result of the death of the transferor is not made on a gift tax return filed on or before the date prescribed by section 6075(b) and is not deemed to be made under section 2632(b)(1)—

(A) the value of such property for purposes of subsection (a) shall be determined as of the time such allocation is filed with the Secretary, and

(B) such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

**(4) QTIP trusts**

If the value of property is included in the estate of a spouse by virtue of section 2044, and if such spouse is treated as the transferor of such property under section 2652(a), the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11 in the estate of such spouse.

**(c) Treatment of certain direct skips which are nontaxable gifts**

**(1) In general**

In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

**(2) Exception for certain transfers in trust**

Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

(B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).

**(3) Nontaxable gift**

For purposes of this subsection, the term “nontaxable gift” means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

(A) section 2503(b) (taking into account the application of section 2513), or

(B) section 2503(e).

**(d) Special rules where more than 1 transfer made to trust**

**(1) In general**

If a transfer of property is made to a trust in existence before such transfer, the applicable fraction for such trust shall be recomputed as of the time of such transfer in the manner provided in paragraph (2).

**(2) Applicable fraction**

In the case of any such transfer, the recomputed applicable fraction is a fraction—

(A) the numerator of which is the sum of—

(i) the amount of the GST exemption allocated to property involved in such transfer, plus

(ii) the nontax portion of such trust immediately before such transfer, and

(B) the denominator of which is the sum of—

(i) the value of the property involved in such transfer reduced by the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and

(ii) the value of all of the property in the trust (immediately before such transfer).

**(3) Nontax portion**

For purposes of paragraph (2), the term “nontax portion” means the product of—

(A) the value of all of the property in the trust, and

(B) the applicable fraction in effect for such trust.

**(4) Similar recomputation in case of certain late allocations**

If—

(A) any allocation of the GST exemption to property transferred to a trust is not made on a timely filed gift tax return required by section 6019, and

(B) there was a previous allocation with respect to property transferred to such trust,

the applicable fraction for such trust shall be recomputed as of the time of such allocation under rules similar to the rules of paragraph (2).

**(e) Special rules for charitable lead annuity trusts****(1) In general**

For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

(A) the numerator of which is the adjusted GST exemption, and

(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

**(2) Adjusted GST exemption**

For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

(A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and

(B) for the actual period of the charitable lead annuity.

**(3) Definitions**

For purposes of this subsection—

**(A) Charitable lead annuity trust**

The term “charitable lead annuity trust” means any trust in which there is a charitable lead annuity.

**(B) Charitable lead annuity**

The term “charitable lead annuity” means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

**(4) Coordination with subsection (d)**

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

**(f) Special rules for certain inter vivos transfers**

Except as provided in regulations—

**(1) In general**

For purposes of determining the inclusion ratio, if—

(A) an individual makes an inter vivos transfer of property, and

(B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

**(2) Valuation**

In the case of any property to which paragraph (1) applies, the value of such property shall be—

(A) if such property is includible in the gross estate of the transferor (other than by

reason of section 2035), its value for purposes of chapter 11, or

(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

**(3) Estate tax inclusion period**

For purposes of this subsection, the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

(A) the date on which there is a generation-skipping transfer with respect to such property, or

(B) the date of the death of the transferor.

**(4) Treatment of spouse**

Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

**(5) Coordination with subsection (d)**

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

**(g) Relief provisions****(1) Relief from late elections****(A) In general**

The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make—

(i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and

(ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

**(B) Basis for determinations**

In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

**(2) Substantial compliance**

An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with re-

spect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722; amended Pub. L. 100-647, title I, § 1014(g)(3)(A), (4), (17)(A), (B), (18), Nov. 10, 1988, 102 Stat. 3563, 3566, 3567; Pub. L. 101-239, title VII, § 7811(j)(4), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101-508, title XI, §§ 11703(c)(1), (2), 11704(a)(17), (36), Nov. 5, 1990, 104 Stat. 1388-517, 1388-519; Pub. L. 107-16, title V, §§ 562(a), 563(a), (b), 564(a), June 7, 2001, 115 Stat. 89-91.)

#### AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107-16, § 562(a), added par. (3).

Subsec. (b)(1). Pub. L. 107-16, § 563(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "If the allocation of the GST exemption to any property is made on a gift tax return filed on or before the date prescribed by section 6075(b) or is deemed to be made under section 2632(b)(1)—"

"(A) the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 12, and

"(B) such allocation shall be effective on and after the date of such transfer."

Subsec. (b)(2)(A). Pub. L. 107-16, § 563(b), reenacted heading without change and amended text of subparagraph (A) generally. Prior to amendment, text read as follows: "If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

Subsec. (g). Pub. L. 107-16, § 564(a), added subsec. (g). 1990—Subsec. (b)(3). Pub. L. 101-508, § 11704(a)(36), amended Pub. L. 100-647, § 1014(g)(4)(F)(ii). See 1988 Amendment note below.

Subsec. (c)(2). Pub. L. 101-508, § 11703(c)(2), inserted at end: "Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A)."

Subsec. (c)(2)(B). Pub. L. 101-508, § 11703(c)(1), substituted "the trust does not terminate before the individual dies" for "such individual dies before the trust is terminated".

Subsec. (d)(2)(B)(i)(I). Pub. L. 101-508, § 11704(a)(17), substituted "State" for "state".

1989—Subsec. (b)(1), (3). Pub. L. 101-239 substituted "a gift tax return filed on or before the date prescribed by section 6075(b)" for "a timely filed gift tax return required by section 6019" in introductory provisions.

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(4)(B), struck out at end "Except as provided in paragraphs (3) and (4) of subsection (b), the value determined under subparagraph (B)(i) shall be of the property as of the time of the transfer to the trust (or the direct skip)."

Subsec. (b). Pub. L. 100-647, § 1014(g)(4)(D), inserted "Except as provided in subsection (f)—" as introductory provision.

Subsec. (b)(2)(A). Pub. L. 100-647, § 1014(g)(4)(C), inserted before period at end "; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

Subsec. (b)(2)(B). Pub. L. 100-647, § 1014(g)(4)(E), substituted "to property transferred at death" for "at or after death" in heading and "to property transferred as a result of the death of the transferor" for "at or after the death of the transferor" in text.

Subsec. (b)(3). Pub. L. 100-647, § 1014(g)(4)(F)(ii), as amended by Pub. L. 101-508, § 11704(a)(36), substituted "Allocations to inter vivos transfers" for "Inter vivos allocations" in heading.

Pub. L. 100-647, § 1014(g)(4)(F)(i), substituted "to any property not transferred as a result of the death of the transferor is" for "to any property is made during the life of the transferor but is".

Subsec. (c). Pub. L. 100-647, § 1014(g)(17)(A), inserted "direct skips which are" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) DIRECT SKIPS.—In the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

"(2) TREATMENT OF NONTAXABLE GIFTS MADE TO TRUSTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any nontaxable gift which is not a direct skip and which is made to a trust shall not be taken into account under subsection (a)(2)(B).

"(B) DETERMINATION OF 1ST TRANSFER TO TRUST.—In the case of any nontaxable gift referred to in subparagraph (A) which is the 1st transfer to the trust, the inclusion ratio for such trust shall be zero.

"(3) NONTAXABLE GIFT.—For purposes of this section, the term 'nontaxable gift' means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

"(A) section 2503(b) (taking into account the application of section 2513), or

"(B) section 2503(e)."

Subsec. (d)(1). Pub. L. 100-647, § 1014(g)(17)(B), struck out "(other than a nontaxable gift)" after "transfer of property".

Subsec. (d)(2)(B)(i). Pub. L. 100-647, § 1014(g)(18), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the value of the property involved in such transfer, reduced by any charitable deduction allowed under section 2055 or 2522 with respect to such property, and".

Subsec. (e). Pub. L. 100-647, § 1014(g)(3)(A), added subsec. (e).

Subsec. (f). Pub. L. 100-647, § 1014(g)(4)(A), added subsec. (f).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 562(b), June 7, 2001, 115 Stat. 90, provided that: "The amendment made by this section [amending this section] shall apply to severances after December 31, 2000."

Pub. L. 107-16, title V, § 563(c), June 7, 2001, 115 Stat. 91, provided that: "The amendments made by this section [amending this section] shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000."

Pub. L. 107-16, title V, § 564(b), June 7, 2001, 115 Stat. 91, provided that:

"(1) RELIEF FROM LATE ELECTIONS.—Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to requests pending on, or filed after, December 31, 2000.

"(2) SUBSTANTIAL COMPLIANCE.—Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date."

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, § 11703(c)(4), Nov. 5, 1990, 104 Stat. 1388-517, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall apply to transfers after March 31, 1988."



## EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1014(g)(3)(B), Nov. 10, 1988, 102 Stat. 3563, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987."

Pub. L. 100-647, title I, § 1014(g)(17)(C), Nov. 10, 1988, 102 Stat. 3567, provided that: "The amendments made by this paragraph [amending this section] shall apply to transfers after March 31, 1988."

Amendment by section 1014(g)(4), (18) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### Subchapter F—Other Definitions and Special Rules

Sec.	
2651.	Generation assignment.
2652.	Other definitions.
2653.	Taxation of multiple skips.
2654.	Special rules.

#### § 2651. Generation assignment

##### (a) In general

For purposes of this chapter, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in this section.

##### (b) Lineal descendants

###### (1) In general

An individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

###### (2) On spouse's side

An individual who is a lineal descendant of a grandparent of a spouse (or former spouse) of the transferor (other than such spouse) shall be assigned to that generation which results from comparing the number of generations between such grandparent and such individual with the number of generations between such grandparent and such spouse.

##### (3) Treatment of legal adoptions, etc.

For purposes of this subsection—

###### (A) Legal adoptions

A relationship by legal adoption shall be treated as a relationship by blood.

###### (B) Relationships by half-blood

A relationship by the half-blood shall be treated as a relationship of the whole-blood.

##### (c) Marital relationship

###### (1) Marriage to transferor

An individual who has been married at any time to the transferor shall be assigned to the transferor's generation.

###### (2) Marriage to other lineal descendants

An individual who has been married at any time to an individual described in subsection (b) shall be assigned to the generation of the individual so described.

##### (d) Persons who are not lineal descendants

An individual who is not assigned to a generation by reason of the foregoing provisions of this section shall be assigned to a generation on the basis of the date of such individual's birth with—

(1) an individual born not more than 12½ years after the date of the birth of the transferor assigned to the transferor's generation,

(2) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and

(3) similar rules for a new generation every 25 years.

##### (e) Special rule for persons with a deceased parent

###### (1) In general

For purposes of determining whether any transfer is a generation-skipping transfer, if—

(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

##### (2) Limited application of subsection to collateral heirs

This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant.

##### (f) Other special rules

###### (1) Individuals assigned to more than 1 generation

Except as provided in regulations, an individual who, but for this subsection, would be assigned to more than 1 generation shall be assigned to the youngest such generation.

**(2) Interests through entities**

Except as provided in paragraph (3), if an estate, trust, partnership, corporation, or other entity has an interest in property, each individual having a beneficial interest in such entity shall be treated as having an interest in such property and shall be assigned to a generation under the foregoing provisions of this subsection.

**(3) Treatment of certain charitable organizations and governmental entities**

Any—

(A) organization described in section 511(a)(2),

(B) charitable trust described in section 511(b)(2), and

(C) governmental entity,

shall be assigned to the transferor's generation.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2725; amended Pub. L. 100-647, title I, § 1014(g)(11), (19), Nov. 10, 1988, 102 Stat. 3565, 3567; Pub. L. 105-34, title V, § 511(a), Aug. 5, 1997, 111 Stat. 860.)

**AMENDMENTS**

1997—Subsecs. (e), (f). Pub. L. 105-34 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(2). Pub. L. 100-647, § 1014(g)(19), inserted “(or former spouse)” after “a spouse”.

Subsec. (e)(3). Pub. L. 100-647, § 1014(g)(11), amended par. (3) generally, including governmental entities among the organizations to be assigned to transferor's generation.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to terminations, distributions, and transfers occurring after Dec. 31, 1997, see section 511(c) of Pub. L. 105-34, set out as a note under section 2612 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2652. Other definitions****(a) Transferor**

For purposes of this chapter—

**(1) In general**

Except as provided in this subsection or section 2653(a), the term “transferor” means—

(A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and

(B) in the case of any property subject to the tax imposed by chapter 12, the donor.

An individual shall be treated as transferring any property with respect to which such individual is the transferor.

**(2) Gift-splitting by married couples**

If, under section 2513, one-half of a gift is treated as made by an individual and one-half

of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

**(3) Special election for qualified terminable interest property**

In the case of—

(A) any trust with respect to which a deduction is allowed to the decedent under section 2056 by reason of subsection (b)(7) thereof, and

(B) any trust with respect to which a deduction to the donor spouse is allowed under section 2523 by reason of subsection (f) thereof,

the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

**(b) Trust and trustee****(1) Trust**

The term “trust” includes any arrangement (other than an estate) which, although not a trust, has substantially the same effect as a trust.

**(2) Trustee**

In the case of an arrangement which is not a trust but which is treated as a trust under this subsection, the term “trustee” shall mean the person in actual or constructive possession of the property subject to such arrangement.

**(3) Examples**

Arrangements to which this subsection applies include arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts.

**(c) Interest****(1) In general**

A person has an interest in property held in trust if (at the time the determination is made) such person—

(A) has a right (other than a future right) to receive income or corpus from the trust,

(B) is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a), or

(C) is described in section 2055(a) and the trust is—

(i) a charitable remainder annuity trust,

(ii) a charitable remainder unitrust within the meaning of section 664, or

(iii) a pooled income fund within the meaning of section 642(c)(5).

**(2) Certain interests disregarded**

For purposes of paragraph (1), an interest which is used primarily to postpone or avoid any tax imposed by this chapter shall be disregarded.

**(3) Certain support obligations disregarded**

The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

- (A) such use is discretionary, or
- (B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act.

**(d) Executor**

For purposes of this chapter, the term “executor” has the meaning given such term by section 2203.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2726; amended Pub. L. 100-647, title I, § 1014(g)(6), (8), (9), (14), (20), Nov. 10, 1988, 102 Stat. 3565-3567; Pub. L. 105-34, title XIII, § 1305(b), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 105-206, title VI, § 6013(a)(3), (4)(A), July 22, 1998, 112 Stat. 819.)

**AMENDMENTS**

1998—Subsec. (b)(1). Pub. L. 105-206, § 6013(a)(4)(A), struck out at end “Such term shall not include any trust during any period the trust is treated as part of an estate under section 645.”

Pub. L. 105-206, § 6013(a)(3), substituted “section 645” for “section 646”.

1997—Subsec. (b)(1). Pub. L. 105-34 inserted at end “Such term shall not include any trust during any period the trust is treated as part of an estate under section 646.”

1988—Subsec. (a)(1). Pub. L. 100-647, § 1014(g)(9), substituted “any property” for “a transfer of a kind” in subpars. (A) and (B) and inserted at end “An individual shall be treated as transferring any property with respect to which such individual is the transferor.”

Subsec. (a)(3). Pub. L. 100-647, § 1014(g)(14), substituted “any trust” for “any property” in subpars. (A) and (B) and “may elect to treat all of the property in such trust” for “may elect to treat such property” in closing provisions.

Subsec. (c)(2). Pub. L. 100-647, § 1014(g)(8), struck out “nominal” before “interests” in heading and substituted “any tax” for “the tax” in text.

Subsec. (c)(3). Pub. L. 100-647, § 1014(g)(6), added par. (3).

Subsec. (d). Pub. L. 100-647, § 1014(g)(20), added subsec. (d).

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1305(d) of Pub. L. 105-34, set out as an Effective Date note under section 645 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2653. Taxation of multiple skips****(a) General rule**

For purposes of this chapter, if—

(1) there is a generation-skipping transfer of any property, and

(2) immediately after such transfer such property is held in trust,

for purposes of applying this chapter (other than section 2651) to subsequent transfers from the portion of such trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

**(b) Trust retains inclusion ratio****(1) In general**

Except as provided in paragraph (2), the provisions of subsection (a) shall not affect the inclusion ratio determined with respect to any trust. Under regulations prescribed by the Secretary, notwithstanding the preceding sentence, proper adjustment shall be made to the inclusion ratio with respect to such trust to take into account any tax under this chapter borne by such trust which is imposed by this chapter on the transfer described in subsection (a).

**(2) Special rule for pour-over trust****(A) In general**

If the generation-skipping transfer referred to in subsection (a) involves the transfer of property from 1 trust to another trust (hereinafter in this paragraph referred to as the “pour-over trust”), the inclusion ratio for the pour-over trust shall be determined by treating the nontax portion of such distribution as if it were a part of a GST exemption allocated to such trust.

**(B) Nontax portion**

For purposes of subparagraph (A), the nontax portion of any distribution is the amount of such distribution multiplied by the applicable fraction which applies to such distribution.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2727.)

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**§ 2654. Special rules****(a) Basis adjustment****(1) In general**

Except as provided in paragraph (2), if property is transferred in a generation-skipping transfer, the basis of such property shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer. The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.

**(2) Certain transfers at death**

If property is transferred in a taxable termination which occurs at the same time as and as a result of the death of an individual, the basis of such property shall be adjusted in a manner similar to the manner provided under section 1014(a); except that, if the inclusion ratio with respect to such property is less than 1, any increase or decrease in basis shall be limited by multiplying such increase or decrease (as the case may be) by the inclusion ratio.

**(b) Certain trusts treated as separate trusts**

For purposes of this chapter—

(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts. For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.

**(c) Disclaimers**

**For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.**

**(d) Limitation on personal liability of trustee**

A trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the fact that—

(1) section 2642(c) (relating to exemption of certain nontaxable gifts) does not apply to a transfer to the trust which was made during the life of the transferor and for which a gift tax return was not filed, or

(2) the inclusion ratio with respect to the trust is greater than the amount of such ratio as computed on the basis of the return on which was made (or was deemed made) an allocation of the GST exemption to property transferred to such trust.

The preceding sentence shall not apply if the trustee has knowledge of facts sufficient reasonably to conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2727; amended Pub. L. 100-647, title I, § 1014(g)(12), (13), Nov. 10, 1988, 102 Stat. 3565, 3566; Pub. L. 101-239, title VII, § 7811(j)(2), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 105-206, title VI, § 6013(a)(4)(B), July 22, 1998, 112 Stat. 819; Pub. L. 113-295, div. A, title II, § 221(a)(95)(B)(iii), Dec. 19, 2014, 128 Stat. 4051.)

**AMENDMENTS**

2014—Subsec. (a)(1). Pub. L. 113-295 struck out “(computed without regard to section 2604)” after “section 2601”.

1998—Subsec. (b). Pub. L. 105-206 inserted at end “For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.”

1989—Subsec. (a)(1). Pub. L. 101-239 inserted at end “The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.”

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(12), inserted “or decrease” after “any increase” and “or decrease (as the case may be)” after “such increase”.

Subsec. (b). Pub. L. 100-647, § 1014(g)(13), substituted “Certain trusts” for “Separate shares” in heading and amended text generally. Prior to amendment, text read as follows: “Substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.”

**EFFECTIVE DATE OF 2014 AMENDMENT**

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates (see section 1305 of Pub. L. 105-34), see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1989 AMENDMENT**

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

**Subchapter G—Administration**

Sec.	
2661.	Administration.
2662.	Return requirements.
2663.	Regulations.
[2664.	Repealed.]

**AMENDMENTS**

2010—Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107-16, § 501(c)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107-16, title V, § 501(c)(2), June 7, 2001, 115 Stat. 69, added item 2664 “Termination”.

**§ 2661. Administration**

Insofar as applicable and not inconsistent with the provisions of this chapter—

(1) except as provided in paragraph (2), all provisions of subtitle F (including penalties) applicable to the gift tax, to chapter 12, or to section 2501, are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601, as the case may be, and

(2) in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, all pro-

visions of subtitle F (including penalties) applicable to the estate tax, to chapter 11, or to section 2001 are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601 (as the case may be).

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2728.)

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### § 2662. Return requirements

#### (a) In general

The Secretary shall prescribe by regulations the person who is required to make the return with respect to the tax imposed by this chapter and the time by which any such return must be filed. To the extent practicable, such regulations shall provide that—

(1) the person who is required to make such return shall be the person liable under section 2603(a) for payment of such tax, and

(2) the return shall be filed—

(A) in the case of a direct skip (other than from a trust), on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer, and

(B) in all other cases, on or before the 15th day of the 4th month after the close of the taxable year of the person required to make such return in which such transfer occurs.

#### (b) Information returns

The Secretary may by regulations require a return to be filed containing such information as he determines to be necessary for purposes of this chapter.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2728.)

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

#### EXTENSION OF TIME FOR FILING RETURN

Pub. L. 111-312, title III, § 301(d)(2), Dec. 17, 2010, 124 Stat. 3300, provided that: “In the case of any generation-skipping transfer made after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010], the due date for filing any return under section 2662 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) shall not be earlier than the date which is 9 months after the date of the enactment of this Act.”

### § 2663. Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including—

(1) such regulations as may be necessary to coordinate the provisions of this chapter with the recapture tax imposed under section 2032A(c),

(2) regulations (consistent with the principles of chapters 11 and 12) providing for the

application of this chapter in the case of transferors who are nonresidents not citizens of the United States, and

(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b).

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2729; amended Pub. L. 100-647, title I, § 1014(g)(10), Nov. 10, 1988, 102 Stat. 3565.)

#### AMENDMENTS

1988—Par. (3). Pub. L. 100-647 added par. (3).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

### [§ 2664. Repealed. Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107-16, title V, § 501(b), June 7, 2001, 115 Stat. 69, related to termination of applicability of chapter to generation-skipping transfers after Dec. 31, 2009.

#### EFFECTIVE DATE OF REPEAL

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

## CHAPTER 14—SPECIAL VALUATION RULES

Sec.	
2701.	Special valuation rules in case of transfers of certain interests in corporations or partnerships.
2702.	Special valuation rules in case of transfers of interests in trusts.
2703.	Certain rights and restrictions disregarded.
2704.	Treatment of certain lapsing rights and restrictions.

### § 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships

#### (a) Valuation rules

##### (1) In general

Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of

any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

**(2) Exceptions for marketable retained interests, etc.**

Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

(B) such interest is of the same class as the transferred interest, or

(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

**(3) Valuation of rights to which paragraph (1) applies**

**(A) In general**

The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

**(B) Valuation of certain qualified payments**

If—

(i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and

(ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

**(C) Valuation of qualified payments where no liquidation, etc. rights**

In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section.

**(4) Minimum valuation of junior equity**

**(A) In general**

In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

(i) the total value of all of the equity interests in such entity, plus

(ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

**(B) Definitions**

For purposes of this paragraph—

**(i) Junior equity interest**

The term “junior equity interest” means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital (or, to the extent provided in regulations, the rights as to either income or capital) are junior to the rights of all other classes of equity interests.

**(ii) Equity interest**

The term “equity interest” means stock or any interest as a partner, as the case may be.

**(b) Applicable retained interests**

For purposes of this section—

**(1) In general**

The term “applicable retained interest” means any interest in an entity with respect to which there is—

(A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

(B) a liquidation, put, call, or conversion right.

**(2) Control**

For purposes of paragraph (1)—

**(A) Corporations**

In the case of a corporation, the term “control” means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

**(B) Partnerships**

In the case of a partnership, the term “control” means—

(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

(ii) in the case of a limited partnership, the holding of any interest as a general partner.

**(C) Applicable family member**

For purposes of this subsection, the term “applicable family member” includes any lineal descendant of any parent of the transferor or the transferor’s spouse.

**(c) Distribution and other rights; qualified payments**

For purposes of this section—

**(1) Distribution right**

**(A) In general**

The term “distribution right” means—

(i) a right to distributions from a corporation with respect to its stock, and

(ii) a right to distributions from a partnership with respect to a partner’s interest in the partnership.

**(B) Exceptions**

The term “distribution right” does not include—

- (i) a right to distributions with respect to any interest which is junior to the rights of the transferred interest,
- (ii) any liquidation, put, call, or conversion right, or
- (iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

**(2) Liquidation, etc. rights****(A) In general**

The term “liquidation, put, call, or conversion right” means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

**(B) Exception for fixed rights****(i) In general**

The term “liquidation, put, call, or conversion right” does not include any right which must be exercised at a specific time and at a specific amount.

**(ii) Treatment of certain rights**

If a right is assumed to be exercised in a particular manner under subsection (a)(3)(B), such right shall be treated as so exercised for purposes of clause (i).

**(C) Exception for certain rights to convert**

The term “liquidation, put, call, or conversion right” does not include any right which—

- (i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for nonlapsing differences in voting power),
- (ii) is nonlapsing,
- (iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and
- (iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.

A rule similar to the rule of the preceding sentence shall apply for partnerships.

**(3) Qualified payment****(A) In general**

Except as otherwise provided in this paragraph, the term “qualified payment” means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

**(B) Treatment of variable rate payments**

For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

**(C) Elections****(i) In general**

Payments under any interest held by a transferor which (without regard to this subparagraph) are qualified payments shall be treated as qualified payments unless the transferor elects not to treat such payments as qualified payments. Payments described in the preceding sentence which are held by an applicable family member shall be treated as qualified payments only if such member elects to treat such payments as qualified payments.

**(ii) Election to have interest treated as qualified payment**

A transferor or applicable family member holding any distribution right which (without regard to this subparagraph) is not a qualified payment may elect to treat such right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so specified are not inconsistent with the underlying legal instrument giving rise to such right.

**(iii) Elections irrevocable**

Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

**(d) Transfer tax treatment of cumulative but unpaid distributions****(1) In general**

If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) or (C) applied, the following shall be increased by the amount determined under paragraph (2):

(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A)(ii) or (iii).

**(2) Amount of increase****(A) In general**

The amount of the increase determined under this paragraph shall be the excess (if any) of—

(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if—

(I) all such payments were paid on the date payment was due, and

(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

**(B) Limitation on amount of increase****(i) In general**

The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of—

(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

**(ii) Applicable percentage**

For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

(I) the number of shares in the corporation held (as of the date of the taxable event) by the transferor which are applicable retained interests of the same class, by

(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

A similar percentage shall be determined in the case of interests in a partnership.

**(iii) Definition**

For purposes of this subparagraph, the term “equity interest” has the meaning given such term by subsection (a)(4)(B).

**(C) Grace period**

For purposes of subparagraph (A), any payment of any distribution during the 4-year period beginning on its due date shall be treated as having been made on such due date.

**(3) Taxable events**

For purposes of this subsection—

**(A) In general**

The term “taxable event” means any of the following:

(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

(ii) The transfer of such applicable retained interest.

(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to such payment.

**(B) Exception where spouse is transferee****(i) Deathtime transfers**

Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

**(ii) Lifetime transfers**

A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(ii) if such transfer does not result in a taxable gift by reason of—

(I) any deduction allowed under section 2523, or the exclusion under section 2503(b), or

(II) consideration for the transfer provided by the spouse.

**(iii) Spouse succeeds to treatment of transferor**

If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

**(4) Special rules for applicable family members****(A) Family member treated in same manner as transferor**

For purposes of this subsection, an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) or (C) applied.

**(B) Transfer to applicable family member**

In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applicable family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this subsection to distributions accumulating with respect to such interest after such taxable event.

**(C) Transfer to transferors**

In the case of a taxable event described in paragraph (3)(A)(ii) involving a transfer of an applicable retained interest from an applicable family member to a transferor, this subsection shall continue to apply to the transferor during any period the transferor holds such interest.

**(5) Transfer to include termination**

For purposes of this subsection, any termination of an interest shall be treated as a transfer.

**(e) Other definitions and rules**

For purposes of this section—

**(1) Member of the family**

The term “member of the family” means, with respect to any transferor—

(A) the transferor’s spouse,

(B) a lineal descendant of the transferor or the transferor’s spouse, and

(C) the spouse of any such descendant.

**(2) Applicable family member**

The term “applicable family member” means, with respect to any transferor—

(A) the transferor’s spouse,

(B) an ancestor of the transferor or the transferor’s spouse, and

(C) the spouse of any such ancestor.

**(3) Attribution of indirect holdings and transfers**

An individual shall be treated as holding any interest to the extent such interest is held in—



directly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

#### (4) Effect of adoption

A relationship by legal adoption shall be treated as a relationship by blood.

#### (5) Certain changes treated as transfers

Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member—

(A) receives an applicable retained interest in such entity pursuant to such transaction, or

(B) under regulations, otherwise holds, immediately after such transaction, an applicable retained interest in such entity.

This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the transferor, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

#### (6) Adjustments

Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation or to reflect the application of subsection (d).

#### (7) Treatment as separate interests

The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-491; amended Pub. L. 104-188, title I, § 1702(f)(1)-(3)(B), (4)-(5)(B), (6)-(10), Aug. 20, 1996, 110 Stat. 1870-1872.)

#### AMENDMENTS

1996—Subsec. (a)(3)(B). Pub. L. 104-188, § 1702(f)(1)(B), inserted “certain” before “qualified” in heading.

Subsec. (a)(3)(C). Pub. L. 104-188, § 1702(f)(1)(A), added subpar. (C).

Subsec. (a)(4)(B)(i). Pub. L. 104-188, § 1702(f)(2), inserted “(or, to the extent provided in regulations, the rights as to either income or capital)” after “income and capital”.

Subsec. (b)(2)(C). Pub. L. 104-188, § 1702(f)(3)(A), added subpar. (C).

Subsec. (c)(1)(B)(i). Pub. L. 104-188, § 1702(f)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)).”

Subsec. (c)(3)(C)(i). Pub. L. 104-188, § 1702(f)(5)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

“(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in such election to treat such payments as payments which are not qualified payments.”

Subsec. (c)(3)(C)(ii). Pub. L. 104-188, § 1702(f)(5)(B), amended first sentence generally. Prior to amendment, first sentence read as follows: “A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election.”

Subsec. (d)(1). Pub. L. 104-188, § 1702(f)(1)(C), substituted “subsection (a)(3)(B) or (C)” for “subsection (a)(3)(B)”.

Subsec. (d)(3)(A)(iii). Pub. L. 104-188, § 1702(f)(6), struck out “the period ending on the date of” after “with respect to”.

Subsec. (d)(3)(B)(ii)(I). Pub. L. 104-188, § 1702(f)(7), inserted “or the exclusion under section 2503(b),” after “section 2523.”

Subsec. (d)(4)(A). Pub. L. 104-188, § 1702(f)(1)(C), substituted “subsection (a)(3)(B) or (C)” for “subsection (a)(3)(B)”.

Subsec. (d)(4)(C). Pub. L. 104-188, § 1702(f)(9), added subpar. (C).

Subsec. (e)(3). Pub. L. 104-188, § 1702(f)(3)(B), substituted “Attribution of indirect holdings and transfers” for “Attribution rules” in par. heading, struck out subpar. (A) designation and heading which read “Indirect holdings and transfers”, and struck out subpar. (B) which read as follows:

“(B) CONTROL.—For purposes of subsections (b)(1), an individual shall be treated as holding any interest held by the individual's brothers, sisters, or lineal descendants.”

Subsec. (e)(5)(A). Pub. L. 104-188, § 1702(f)(8)(A), substituted “such transaction” for “such contribution to capital or such redemption, recapitalization, or other change”.

Subsec. (e)(5)(B). Pub. L. 104-188, § 1702(f)(8)(B), substituted “such transaction” for “the transfer”.

Subsec. (e)(6). Pub. L. 104-188, § 1702(f)(10), inserted “or to reflect the application of subsection (d)” before period at end.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

#### EFFECTIVE DATE

Pub. L. 101-508, title XI, § 11602(e)(1), Nov. 5, 1990, 104 Stat. 1388-500, provided that:

“(A) IN GENERAL.—The amendments made by subsection (a) [enacting this chapter]—

“(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

“(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

“(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

“(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

“(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

“(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

“(i) any failure to exercise a right of conversion,

“(ii) any failure to pay dividends, and

“(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.”

**TIME FOR ELECTION UNDER SUBSECTION (c)(3)(C)(i)**

Pub. L. 104-188, title I, § 1702(f)(5)(C), Aug. 20, 1996, 110 Stat. 1871, provided that: “The time for making an election under the second sentence of section 2701(c)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) shall not expire before the due date (including extensions) for filing the transferor’s return of the tax imposed by section 2501 of such Code for the first calendar year ending after the date of enactment [probably means the date of enactment of Pub. L. 104-188, Oct. 20, 1996].”

**STUDY OF METHODS USED TO DISTORT VALUATION OF PROPERTY FOR PURPOSES OF ESTATE AND GIFT TAX**

Pub. L. 101-508, title XI, § 11602(d), Nov. 5, 1990, 104 Stat. 1388-500, provided that: “The Secretary of the Treasury shall conduct a study of—

- “(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and
  - “(2) other methods using discretionary rights to distort the value of property for such purposes.
- The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.”

**§ 2702. Special valuation rules in case of transfers of interests in trusts**

**(a) Valuation rules**

**(1) In general**

Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor’s family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

**(2) Valuation of retained interests**

**(A) In general**

The value of any retained interest which is not a qualified interest shall be treated as being zero.

**(B) Valuation of qualified interest**

The value of any retained interest which is a qualified interest shall be determined under section 7520.

**(3) Exceptions**

**(A) In general**

This subsection shall not apply to any transfer—

- (i) if such transfer is an incomplete gift,
- (ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust, or
- (iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section.

**(B) Incomplete gift**

For purposes of subparagraph (A), the term “incomplete gift” means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

**(b) Qualified interest**

For purposes of this section, the term “qualified interest” means—

- (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,
- (2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and
- (3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

**(c) Certain property treated as held in trust**

For purposes of this section—

**(1) In general**

The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

**(2) Joint purchases**

If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

**(3) Term interest**

The term “term interest” means—

- (A) a life interest in property, or
- (B) an interest in property for a term of years.

**(4) Valuation rule for certain term interests**

If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

- (A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and
- (B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

**(d) Treatment of transfers of interests in portion of trust**

In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

**(e) Member of the family**

For purposes of this section, the term “member of the family” shall have the meaning given such term by section 2704(c)(2).

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-497; amended Pub. L. 104-188, title I, § 1702(f)(11), Aug. 20, 1996, 110 Stat. 1872.)

## AMENDMENTS

1996—Subsec. (a)(3)(A)(i). Pub. L. 104-188, § 1702(f)(11)(A)(i), (ii), (B)(i), substituted “if” for “to the extent” and “incomplete gift” for “incomplete transfer”, and struck out “or” at end.

Subsec. (a)(3)(A)(ii). Pub. L. 104-188, § 1702(f)(11)(A)(iii), substituted “, or” for period at end.

Subsec. (a)(3)(A)(iii). Pub. L. 104-188, § 1702(f)(11)(A)(iv), added cl. (iii).

Subsec. (a)(3)(B). Pub. L. 104-188, § 1702(f)(11)(B), substituted “incomplete gift” for “incomplete transfer” in heading and text.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

### § 2703. Certain rights and restrictions disregarded

#### (a) General rule

For purposes of this subtitle, the value of any property shall be determined without regard to—

- (1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or
- (2) any restriction on the right to sell or use such property.

#### (b) Exceptions

Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

- (1) It is a bona fide business arrangement.
- (2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.
- (3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-498.)

### § 2704. Treatment of certain lapsing rights and restrictions

#### (a) Treatment of lapsed voting or liquidation rights

##### (1) In general

For purposes of this subtitle, if—

(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

##### (2) Amount of transfer

For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

(B) the value of such interests immediately after the lapse.

#### (3) Similar rights

The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

#### (b) Certain restrictions on liquidation disregarded

##### (1) In general

For purposes of this subtitle, if—

(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

##### (2) Applicable restriction

For purposes of this subsection, the term “applicable restriction” means any restriction—

(A) which effectively limits the ability of the corporation or partnership to liquidate, and

(B) with respect to which either of the following applies:

- (i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).
- (ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

##### (3) Exceptions

The term “applicable restriction” shall not include—

(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

(B) any restriction imposed, or required to be imposed, by any Federal or State law.

##### (4) Other restrictions

The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

#### (c) Definitions and special rules

For purposes of this section—

##### (1) Control

The term “control” has the meaning given such term by section 2701(b)(2).

**(2) Member of the family**

The term “member of the family” means, with respect to any individual—

- (A) such individual’s spouse,
- (B) any ancestor or lineal descendant of such individual or such individual’s spouse,
- (C) any brother or sister of the individual, and
- (D) any spouse of any individual described in subparagraph (B) or (C).

**(3) Attribution**

The rule of section 2701(e)(3) shall apply for purposes of determining the interests held by any individual.

(Added Pub. L. 101-508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388-498; amended Pub. L. 104-188, title I, §1702(f)(3)(C), Aug. 20, 1996, 110 Stat. 1871.)

## AMENDMENTS

1996—Subsec. (c)(3). Pub. L. 104-188 substituted “section 2701(e)(3)” for “section 2701(e)(3)(A)”.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

## CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES

Sec.

2801. Imposition of tax.

**§ 2801. Imposition of tax****(a) In general**

If, during any calendar year, any United States citizen or resident receives any covered gift or bequest, there is hereby imposed a tax equal to the product of—

- (1) the highest rate of tax specified in the table contained in section 2001(c) as in effect on the date of such receipt, and
- (2) the value of such covered gift or bequest.

**(b) Tax to be paid by recipient**

The tax imposed by subsection (a) on any covered gift or bequest shall be paid by the person receiving such gift or bequest.

**(c) Exception for certain gifts**

Subsection (a) shall apply only to the extent that the value of covered gifts and bequests received by any person during the calendar year exceeds the dollar amount in effect under section 2503(b) for such calendar year.

**(d) Tax reduced by foreign gift or estate tax**

The tax imposed by subsection (a) on any covered gift or bequest shall be reduced by the amount of any gift or estate tax paid to a foreign country with respect to such covered gift or bequest.

**(e) Covered gift or bequest****(1) In general**

For purposes of this chapter, the term “covered gift or bequest” means—

- (A) any property acquired by gift directly or indirectly from an individual who, at the

time of such acquisition, is a covered expatriate, and

- (B) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate.

**(2) Exceptions for transfers otherwise subject to estate or gift tax**

Such term shall not include—

- (A) any property shown on a timely filed return of tax imposed by chapter 12 which is a taxable gift by the covered expatriate, and
- (B) any property included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate.

**(3) Exceptions for transfers to spouse or charity**

Such term shall not include any property with respect to which a deduction would be allowed under section 2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person.

**(4) Transfers in trust****(A) Domestic trusts**

In the case of a covered gift or bequest made to a domestic trust—

- (i) subsection (a) shall apply in the same manner as if such trust were a United States citizen, and
- (ii) the tax imposed by subsection (a) on such gift or bequest shall be paid by such trust.

**(B) Foreign trusts****(i) In general**

In the case of a covered gift or bequest made to a foreign trust, subsection (a) shall apply to any distribution attributable to such gift or bequest from such trust (whether from income or corpus) to a United States citizen or resident in the same manner as if such distribution were a covered gift or bequest.

**(ii) Deduction for tax paid by recipient**

There shall be allowed as a deduction under section 164 the amount of tax imposed by this section which is paid or accrued by a United States citizen or resident by reason of a distribution from a foreign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

**(iii) Election to be treated as domestic trust**

Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust. Such an election may be revoked with the consent of the Secretary.

**(f) Covered expatriate**

For purposes of this section, the term “covered expatriate” has the meaning given to such term by section 877A(g)(1).

(Added Pub. L. 110-245, title III, §301(b)(1), June 17, 2008, 122 Stat. 1644; amended Pub. L. 113-295,

div. A, title II, §206(b)(1), Dec. 19, 2014, 128 Stat. 4027.)

#### AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-295 struck out “(or, if greater, the highest rate of tax specified in the table applicable under section 2502(a) as in effect on the date)” after “such receipt”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective as if included in the provisions of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111-312, to which such amendment relates, see section 206(d) of Pub. L. 113-295, set out as a note under section 32 of this title.

#### EFFECTIVE DATE

Pub. L. 110-245, title III, §301(g), June 17, 2008, 122 Stat. 1647, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this chapter and section 877A of this title and amending sections 877, 6039G, and 7701 of this title] shall apply to any individual whose expatriation date (as so defined) is on or after the date of the enactment of this Act [June 17, 2008].

“(2) GIFTS AND BEQUESTS.—Chapter 15 of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to covered gifts and bequests (as defined in section 2801 of such Code, as so added) received on or after the date of the enactment of this Act from transferors (or from the estates of transferors) whose expatriation date is on or after such date of enactment.”

### Subtitle C—Employment Taxes

Chapter	Sec. <sup>1</sup>
21. Federal insurance contributions act .....	3101
22. Railroad retirement tax act .....	3201
23. Federal unemployment tax act .....	3301
23A. Railroad Unemployment Repayment Tax .....	3321
24. Collection of income tax at source on wages .....	3401
25. General provisions relating to employment taxes .....	3501

#### AMENDMENTS

1983—Pub. L. 98-76, title II, §231(c), Aug. 12, 1983, 97 Stat. 429, added item for chapter 23A.

Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248, title III, §§307(b)(1), (6), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the heading of subtitle C is amended to read “Employment Taxes and Collection of Income Tax at Source”, the caption of chapter 24 is amended by striking out “On Wages”, and the caption of chapter 25 is amended by inserting “And Collection Of Income Taxes At Source” after “Employment Taxes”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

### CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter	Sec. <sup>1</sup>
A. Tax on employees .....	3101

<sup>1</sup> Section numbers editorially supplied.

<sup>1</sup> Section numbers editorially supplied.

B. Tax on employers .....	3111
C. General provisions .....	3121

### Subchapter A—Tax on Employees

Sec. 3101. Rate of tax.
3102. Deduction of tax from wages.

#### § 3101. Rate of tax

##### (a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to 6.2 percent of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b)).<sup>1</sup>

##### (b) Hospital insurance

###### (1) In general

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to 1.45 percent of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b)).

###### (2) Additional tax

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) a tax equal to 0.9 percent of wages which are received with respect to employment (as defined in section 3121(b)) during any taxable year beginning after December 31, 2012, and which are in excess of—

(A) in the case of a joint return, \$250,000,

(B) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under subparagraph (A), and

(C) in any other case, \$200,000.

##### (c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, §208(b), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, §202(b), 70 Stat. 845; Pub. L. 85-840, title IV, §401(b), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87-64, title II, §201(b), June 30, 1961, 75 Stat. 141; Pub. L. 89-97, title I, §111(c)(5), title III, §321(b), July 30, 1965, 79 Stat. 342, 395; Pub. L. 90-248, title I, §109(a)(2), (b)(2), Jan. 2, 1968, 81 Stat. 836; Pub. L. 92-5, title II, §204(a)(1), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92-336, §204(a)(2), (b)(2), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92-603, §135(a)(2), (b)(2), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93-233, §6(a)(1), (b)(2), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94-455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L.

<sup>1</sup> So in original. Probably should be followed by a period.

95-216, title I, §101(a)(1), (b)(1), title III, §317(b)(2), Dec. 20, 1977, 91 Stat. 1510, 1511, 1540; Pub. L. 98-21, title I, §123(a)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 108-203, title IV, §415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111-148, title IX, §9015(a)(1), title X, §10906(a), Mar. 23, 2010, 124 Stat. 870, 1020; Pub. L. 111-152, title I, §1402(b)(1)(A), Mar. 30, 2010, 124 Stat. 1063; Pub. L. 113-295, div. A, title II, §221(a)(99)(A), Dec. 19, 2014, 128 Stat. 4051.)

## REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

## AMENDMENTS

2014—Subsec. (a). Pub. L. 113-295 substituted “6.2 percent of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b))” for “the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—” and table of rates.

2010—Subsec. (b). Pub. L. 111-148, §9015(a)(1), designated existing text as par. (1), inserted heading, substituted “1.45 percent of the” for “the following percentages of the” and “(as defined in section 3121(b)).” for “(as defined in section 3121(b))—”, struck out former pars. (1) to (6), which related to rates in calendar years 1974 to 1985 and after Dec. 31, 1985, and added par. (2).

Subsec. (b)(2). Pub. L. 111-152, §1402(b)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Pub. L. 111-148, §10906(a), substituted “0.9 percent” for “0.5 percent” in introductory provisions.

2004—Subsec. (c). Pub. L. 108-203 substituted “exclusively to the laws applicable to” for “to taxes or contributions for similar purposes under”.

1983—Subsec. (a). Pub. L. 98-21 substituted table of rates for former pars. (1) to (7) which had imposed a tax on the income of every individual (1) with respect to wages received during the calendar years 1974 through 1977 at the rate of 4.95 percent; (2) with respect to wages received during the calendar year 1978 at the rate of 5.05 percent; (3) with respect to wages received during the calendar years 1979 and 1980 at the rate of 5.08 percent; (4) with respect to wages received during the calendar year 1981 at the rate of 5.35 percent; (5) with respect to wages received during the calendar years 1982 through 1984 at the rate of 5.40 percent; (6) with respect to wages received during the calendar years 1985 through 1989 at the rate of 5.70 percent; and (7) with respect to wages received after Dec. 31, 1989, at the rate of 6.20 percent.

1977—Subsec. (a). Pub. L. 95-216, §101(a)(1), substituted “1974 through 1977” for “1974 through 2010” in par. (1), substituted “wages received during the calendar year 1978, the rate shall be 5.05 percent” for “wages received after December 31, 2010, the rate shall be 5.95 percent” in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95-216, §101(b)(1), substituted “wages received during the calendar year 1978, the rate shall be 1.00 percent” for “wages received during the calendar years 1978 through 1980, the rate shall be 1.10 percent” in par. (2), substituted “wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent” for “wages received during the calendar years 1981 through 1985, the rate shall be 1.35 percent”, in par. (3), substituted “wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent” for “wages received after December 31, 1985, the rate shall be 1.50 percent” in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95-216, §317(b)(2), added subsec. (c).

1976—Subsec. (a). Pub. L. 94-455, §1903(a)(1)(A), redesignated pars. (5) and (6) as (1) and (2), respectively.

Former pars. (1) to (4), which related to a tax rate of 3.8 percent with respect to wages received during the calendar year 1968, a tax rate of 4.2 percent with respect to wages received during the calendar years 1969 and 1970, a tax rate of 4.6 percent with respect to wages received during the calendar years 1971 and 1972, and a tax rate of 4.85 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

Subsec. (b). Pub. L. 94-455, §1903(a)(1)(B), redesignated pars. (3) to (6) as (1) to (4), respectively. Former pars. (1) and (2), which related to a tax rate of .60 percent with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972 and a tax rate of 1.0 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

1973—Subsec. (a)(4). Pub. L. 93-233, §6(a)(1), struck out provision for application of 4.85 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (a)(5). Pub. L. 93-233, §6(a)(1), increased rate of tax from 4.80 percent to 4.95 percent and substituted calendar year “1974” for “1978” as the initial year for application of such rate.

Subsec. (a)(6). Pub. L. 93-233, §6(a)(1), increased rate of tax from 5.85 percent to 5.95 percent.

Subsec. (b)(2). Pub. L. 93-233, §6(b)(2), struck out provision for application of 1.0 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (b)(3). Pub. L. 93-233, §6(b)(2), incorporated former provision of par. (2) for taxation of wages received during calendar years 1974, 1975, 1976, and 1977, decreased the applicable rate of tax from 1.0 percent to 0.90 percent, and struck out provision for 1.25 percent rate of tax for calendar years 1978, 1979, 1980.

Subsec. (b)(4). Pub. L. 93-233, §6(b)(2), incorporated former provision of par. (3) for taxation of wages received during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

Subsec. (b)(5). Pub. L. 93-233, §6(b)(2), incorporated former provision of par. (4) for taxation of wages received during calendar years 1981 through 1985 at applicable 1.35 percent rate of tax and struck out provision for 1.45 percent rate of tax for wages received after Dec. 31, 1985.

Subsec. (b)(6). Pub. L. 93-233, §6(b)(2), incorporated former provision of par. (5) for taxation of wages received after Dec. 31, 1985 and increased the applicable rate of tax from 1.45 to 1.50 percent.

1972—Subsec. (a)(3). Pub. L. 92-603, §135(a)(2)(A), substituted “the calendar years 1971 and 1972” for “any of the calendar years 1971 through 1977”.

Subsec. (a)(3) to (5). Pub. L. 92-336, §204(a)(2), substituted “any of the calendar years 1971 through 1977” for “the calendar years 1971 and 1972” in par. (3), “any of the calendar years 1978 through 2010” for “the calendar years 1973, 1974, and 1975” and “4.5” for “5.0” in par. (4), and “December 31, 2010” for “December 31, 1975” and “5.35” for “5.15” in par. (5).

Subsec. (a)(4). Pub. L. 92-603, §135(a)(2)(B), substituted “wages received during the calendar years 1973, 1974, 1975, 1976, and 1977, the rate shall be 4.85 percent;” for “wages paid during any of the calendar years 1978 through 2010, the rate shall be 4.5 percent; and”.

Subsec. (a)(5). Pub. L. 92-603, §135(a)(2)(B), substituted “wages received during the calendar years 1978 through 2010, the rate shall be 4.80 percent; and” for “wages paid after December 31, 2010, the rate shall be 5.35 percent”.

Subsec. (a)(6). Pub. L. 92-603, §135(a)(2)(B), added par. (6).

Subsec. (b)(2). Pub. L. 92-603, §135(b)(2), increased rate of tax from 0.9 percent to 1.0 percent.

Subsec. (b)(2) to (5). Pub. L. 92-336, §204(b)(2), inserted references to 1976 and 1977 and substituted “0.9” for “0.65” in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted “1.0” for “0.70” in par. (3), substituted references for the cal-

endar years 1986 through 1992 for references to the calendar years 1980 through 1986 and substituted “1.1” for “0.80” in par. (4), and substituted “1992” for “1986” and “1.2” for “0.90” in par. (5).

Subsec. (b)(3). Pub. L. 92-603, § 135(b)(2), substituted “and 1980, the rate shall be 1.25 percent” for “1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.0 percent”.

Subsec. (b)(4). Pub. L. 92-603, § 135(b)(2), substituted “1981, 1982, 1983, 1984, and 1985, the rate shall be 1.35 percent; and” for “1986, 1987, 1988, 1990, 1991, and 1992, the rate shall be 1.1 percent; and”.

Subsec. (b)(5). Pub. L. 92-603, § 135(b)(2), substituted “December 31, 1985, the rate shall be 1.45 percent” for “December 31, 1992, the rate shall be 1.2 percent”.

1971—Subsec. (a)(4). Pub. L. 92-5 substituted “with respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 5.0 percent; and” for “with respect to wages received after December 31, 1972, the rate shall be 5.0 percent”.

Subsec. (a)(5). Pub. L. 92-5 added par. (5).

1968—Subsec. (a)(1) to (4). Pub. L. 90-248, § 109(a)(2), substituted “1968” and “3.8” for “1966” and “3.85” in par. (1) and “1969 and 1970” and “4.2” for “1967 and 1968” and “3.9” in par. (2), struck out reference to calendar years 1969 and 1970 from par. (3) and substituted “4.6” and “4.4”, and substituted “5.0” for “4.85” in par. (4).

Subsec. (b)(1) to (5). Pub. L. 90-248, § 109(b)(2), struck out par. (1) provision for employee rate of 0.35 percent of wages received with respect to employment during calendar year 1966, redesignated pars. (2) to (6) as (1) to (5), struck out reference to “1967” in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89-97, § 321(b), divided the total tax imposed under the entire section upon income through a tax equal to percentages of wages into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 4½ percent to 4.20 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 4½ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 4½ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1968, (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4½ percent to 4.90 percent the rate for calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4½ percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975, (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 4½ percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 4½ percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate for calendar years after Dec. 31, 1986, to 5.65 percent (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89-97, § 111(c)(5), struck out “, but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees” after “as defined in section 3121(b)”.

1961—Pub. L. 87-64 increased rate of tax for calendar year 1962 from 3 to 3½ percent, calendar years 1963 to 1965, inclusive, from 3½ to 3¾ percent, calendar years 1966 and 1967 from 4 to 4½ percent, calendar year 1968 from 4 to 4¾ percent, and for calendar years after December 31, 1968, from 4½ to 4¾ percent.

1958—Pub. L. 85-840 increased rate of tax by substituting provisions imposing a tax of 2½% for calendar year 1959, 3% for calendar years 1960 to 1962, 3½% for calendar years 1963 to 1965, 4% for calendar years 1966 to 1968, and 4½% for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼% for calendar years 1957 to 1959, 2¾% for calendar years 1960 to 1964, 3¼% for calendar years 1965 to 1969, 3¾% for calendar years 1970 to 1974, and 4¼% for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased rate of tax with respect to wages received during calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased the ¾ percent rate of tax for the calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-152 applicable with respect to remuneration received, and taxable years beginning after, Dec. 31, 2012, see section 1402(b)(3) of Pub. L. 111-152, set out as a note under section 1401 of this title.

Amendment by section 9015(a)(1) of Pub. L. 111-148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111-148, set out as a note under section 164 of this title.

Amendment by section 10906(a) of Pub. L. 111-148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 10906(c) of Pub. L. 111-148, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-21, title I, § 123(a)(3), Apr. 20, 1983, 97 Stat. 88, provided that: “The amendments made by this subsection [amending this section and section 3111 of this title] shall apply to remuneration paid after December 31, 1983.”

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95-216, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIX, § 1903(d), Oct. 4, 1976, 90 Stat. 1810, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [see Tables for classification of section 1903 of Pub. L. 94-455] shall apply with respect to wages paid after December 31, 1976, except that the amendments made to chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3201 et seq. of this title] shall apply with respect to compensation paid for services rendered after December 31, 1976.”

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after December 31, 1973, see section 6(c) of Pub. L. 93-233, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92-603 applicable only with respect to remuneration paid after Dec. 31, 1972, see section 135(c) of Pub. L. 92-603, set out as a note under section 1401 of this title.

Amendment by Pub. L. 92-336 applicable only with respect to remuneration paid after December 31, 1972, see

section 204(c) of Pub. L. 92-336, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92-5, title II, § 204(b), Mar. 17, 1971, 85 Stat. 12, provided that: "The amendments made by subsection (a)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1971. The remaining amendments made by this section [amending section 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1971."

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90-248, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(5) of Pub. L. 89-97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act (section 3201 et seq. of this title) provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act (section 3101 et seq. of this title) provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 1395i-1 of Title 42, The Public Health and Welfare.

Amendment by section 321(b) of Pub. L. 89-97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89-97, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87-64, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401(d) of Pub. L. 85-840, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202(d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

#### TEMPORARY EMPLOYEE PAYROLL TAX CUT

Notwithstanding any other provision of law, with respect to remuneration received during calendar years 2011 and 2012, the rate of tax under 26 U.S.C. 3101(a) to be 4.2 percent, see section 601 of Pub. L. 111-312, set out as a note under section 1401 of this title.

#### PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

Pub. L. 97-123, § 3(f), Dec. 29, 1981, 95 Stat. 1663; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding any other provision of law, no penalties or interest shall be assessed on account of any failure to make timely payment of taxes, imposed by sections 3101, 3111, 3201(b), 3211, or 3221(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to payments made for the period beginning January 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to this section (or the amendments made by this section) [amending sections

3121 and 3231 of this title and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of this title] and that such failure is due to reasonable cause and not to willful neglect."

#### REFERENCES TO SOCIAL SECURITY ACT

Act Sept. 1, 1954, ch. 1206, title IV, § 402, 68 Stat. 1098, as amended by act Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095, provided that: "References in the Internal Revenue Code of 1939 [former Title 26, Internal Revenue Code], the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Railroad Retirement Act of 1937, as amended [section 231 et seq. of Title 45, Railroads], or any other law of the United States to any section or subdivision of a section of the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare] redesignated by this Act shall be deemed to refer to such section or subdivision of a section as so redesignated."

### § 3102. Deduction of tax from wages

#### (a) Requirement

The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than \$100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than \$150; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20.

#### (b) Indemnification of employer

Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.



**(c) Special rule for tips**

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the year) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following year) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such year as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such year (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the year to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the year.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

**(d) Special rule for certain taxable group-term life insurance benefits****(1) In general**

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3101 on such payments, and

(C) the tax imposed by section 3101 on such payments shall be paid by the employee.

**(2) Benefits to which subsection applies**

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes wages, and

(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.

**(e) Special rule for certain transferred Federal employees**

In the case of any payments of wages for service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable—

(1) subsection (a) shall not apply,

(2) the head of the Federal agency from which the transfer was made shall separately include on the statement required under section 6051—

(A) the amount determined to be the amount of the wages for such service, and

(B) the amount of the tax imposed by section 3101 on such payments, and

(3) the tax imposed by section 3101 on such payments shall be paid by the employee.

**(f) Special rules for additional tax****(1) In general**

In the case of any tax imposed by section 3101(b)(2), subsection (a) shall only apply to the extent to which the taxpayer receives wages from the employer in excess of \$200,000, and the employer may disregard the amount of wages received by such taxpayer's spouse.

**(2) Collection of amounts not withheld**

To the extent that the amount of any tax imposed by section 3101(b)(2) is not collected by the employer, such tax shall be paid by the employee.

**(3) Tax paid by recipient**

If an employer, in violation of this chapter, fails to deduct and withhold the tax imposed by section 3101(b)(2) and thereafter the tax is paid by the employee, the tax so required to be deducted and withheld shall not be collected from the employer, but this paragraph shall in no case relieve the employer from liability for any penalties or additions to tax otherwise applicable in respect of such failure to deduct and withhold.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, § 205A, 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 201(h)(3), 70 Stat. 841; Pub. L. 89-97, title III, § 313(c)(1), (2), July 30, 1965, 79 Stat. 382, 383; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-216, title III, § 355(a), (b), Dec. 20, 1977, 91 Stat. 1555; Pub. L. 101-508, title V, § 5124(a), Nov. 5, 1990, 104 Stat. 1388-284; Pub. L. 103-296, title III, § 319(a)(3), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 103-387, § 2(a)(1)(D), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 108-203, title IV, § 424(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 111-148, title IX, § 9015(a)(2), Mar. 23, 2010, 124 Stat. 871.)

## AMENDMENTS

2010—Subsec. (f). Pub. L. 111-148 added subsec. (f).

2004—Subsec. (a). Pub. L. 108-203 struck out “and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis” after “less than \$150”.

1994—Subsec. (a). Pub. L. 103-387 in second sentence substituted “An employer who in any calendar year” for “An employer who in any calendar quarter” and “remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year” for “remuneration paid to the employee by the employer in the calendar quarter is less than \$50”.

Subsec. (e). Pub. L. 103-296 added subsec. (e).

1990—Subsec. (d). Pub. L. 101-508 added subsec. (d).

1977—Subsec. (a). Pub. L. 95-216, § 355(a), substituted “cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable” for “cash remuneration to which paragraph (7)(B) or (C) or (10) of section 3121(a) is applicable” and inserted “and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than \$100”.

Subsec. (c)(1), (2). Pub. L. 95-216, § 355(b)(1), substituted “year” for “quarter” wherever appearing.

Subsec. (c)(3)(A). Pub. L. 95-216, § 355(b)(2)(A), substituted “in any calendar year” for “in any quarter of the calendar year”.

Subsec. (c)(3)(B), (C). Pub. L. 95-216, § 355(b)(2)(B), substituted “year” for “quarter” wherever appearing.

1976—Subsec. (c)(3). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1965—Subsec. (a). Pub. L. 89-97, § 313(c)(2), inserted provisions at end of second sentence allowing a deduction from any wages of an employee of an amount equivalent to the tax on tips when an employer is furnished with a written statement of tips received by an employee.

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

1956—Subsec. (a). Act Aug. 1, 1956, substituted “\$150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis” for “\$100”.

1954—Subsec. (a). Act Sept. 1, 1954, inserted last sentence permitting in certain instances an employer to deduct employee tax even though payment to employee is less than \$50 for calendar quarter or \$100 for calendar year.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111-148, set out as a note under section 164 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Pub. L. 103-387, § 2(a)(3), Oct. 22, 1994, 108 Stat. 4072, provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1993.

“(B) EXCLUDED EMPLOYMENT.—The amendments made by paragraphs (1)(C) and (2)(B) [amending section 3121 of this title and section 410 of Title 42] shall apply to services performed after December 31, 1994.”

Amendment by Pub. L. 103-296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103-296, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title V, § 5124(c), Nov. 5, 1990, 104 Stat. 1388-285, provided that: “The amendments made by this

section [amending this section and section 3202 of this title] shall apply to coverage provided after December 31, 1990.”

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-216, title III, § 355(c), Dec. 20, 1977, 91 Stat. 1555, provided that: “The amendments made by this section [amending this section] shall apply with respect to remuneration paid and to tips received after December 31, 1977.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

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

#### NO LOSS OF SOCIAL SECURITY COVERAGE FOR 1994; CONTINUATION OF W-2 FILING REQUIREMENT

Pub. L. 103-387, § 2(a)(4), Oct. 22, 1994, 108 Stat. 4072, provided that: “Notwithstanding the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare], if the wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) paid during 1994 to an employee for domestic service in a private home of the employer are less than \$1,000—

“(A) the employer shall file any return or statement required under section 6051 of such Code with respect to such wages (determined without regard to such amendments), and

“(B) the employee shall be entitled to credit under section 209 of the Social Security Act [42 U.S.C. 409] with respect to any such wages required to be included on any such return or statement.”

### Subchapter B—Tax on Employers

Sec.

- 3111. Rate of tax.
- 3112. Instrumentalities of the United States.
- [3113. Repealed.]

#### AMENDMENTS

1976—Pub. L. 94-455, title XIX, § 1903(b), Oct. 4, 1976, 90 Stat. 1810, struck out item 3113 “District of Columbia credit unions”.

1956—Act Aug. 1, 1956, ch. 836, title II, § 201(a)(2), 70 Stat. 839, added item 3113.

### § 3111. Rate of tax

#### (a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6.2 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).

#### (b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 1.45 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).

#### (c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by

this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

**(d) Special exemption for certain individuals hired in 2010**

**(1) In general**

Subsection (a) shall not apply to wages paid by a qualified employer with respect to employment during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, of any qualified individual for services performed—

(A) in a trade or business of such qualified employer, or

(B) in the case of a qualified employer exempt from tax under section 501(a), in furtherance of the activities related to the purpose or function constituting the basis of the employer's exemption under section 501.

**(2) Qualified employer**

For purposes of this subsection—

**(A) In general**

The term “qualified employer” means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

**(B) Treatment of employees of post-secondary educational institutions**

Notwithstanding subparagraph (A), the term “qualified employer” includes any employer which is a public institution of higher education (as defined in section 101(b) of the Higher Education Act of 1965).

**(3) Qualified individual**

For purposes of this subsection, the term “qualified individual” means any individual who—

(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

(D) is not an individual described in section 51(i)(1) (applied by substituting “qualified employer” for “taxpayer” each place it appears).

**(4) Election**

A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

**(5) Special rule for first calendar quarter of 2010**

**(A) Nonapplication of exemption during first quarter**

Paragraph (1) shall not apply with respect to wages paid during the first calendar quarter of 2010.

**(B) Crediting of first quarter exemption during second quarter**

The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to wages paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.

**(e) Credit for employment of qualified veterans**

**(1) In general**

If a qualified tax-exempt organization hires a qualified veteran with respect to whom a credit would be allowable under section 38 by reason of section 51 if the organization were not a qualified tax-exempt organization, then there shall be allowed as a credit against the tax imposed by subsection (a) on wages paid with respect to employment of all employees of the organization during the applicable period an amount equal to the credit determined under section 51 (after application of the modifications under paragraph (3)) with respect to wages paid to such qualified veteran during such period.

**(2) Overall limitation**

The aggregate amount allowed as a credit under this subsection for all qualified veterans for any period with respect to which tax is imposed under subsection (a) shall not exceed the amount of the tax imposed by subsection (a) on wages paid with respect to employment of all employees of the organization during such period.

**(3) Modifications**

For purposes of paragraph (1), section 51 shall be applied—

(A) by substituting “26 percent” for “40 percent” in subsection (a) thereof,

(B) by substituting “16.25 percent” for “25 percent” in subsection (i)(3)(A) thereof, and

(C) by only taking into account wages paid to a qualified veteran for services in furtherance of the activities related to the purpose or function constituting the basis of the organization's exemption under section 501.

**(4) Applicable period**

The term “applicable period” means, with respect to any qualified veteran, the 1-year period beginning with the day such qualified veteran begins work for the organization.

**(5) Definitions**

For purposes of this subsection—

(A) the term “qualified tax-exempt organization” means an employer that is an organization described in section 501(c) and exempt from taxation under section 501(a), and

(B) the term “qualified veteran” has meaning<sup>1</sup> given such term by section 51(d)(3).

<sup>1</sup> So in original. Probably should be preceded by “the”.

**(f) Credit for research expenditures of qualified small businesses**

**(1) In general**

In the case of a taxpayer who has made an election under section 41(h) for a taxable year, there shall be allowed as a credit against the tax imposed by subsection (a) for the first calendar quarter which begins after the date on which the taxpayer files the return specified in section 41(h)(4)(A)(ii) an amount equal to the payroll tax credit portion determined under section 41(h)(2).

**(2) Limitation**

The credit allowed by paragraph (1) shall not exceed the tax imposed by subsection (a) for any calendar quarter on the wages paid with respect to the employment of all individuals in the employ of the employer.

**(3) Carryover of unused credit**

If the amount of the credit under paragraph (1) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be carried to the succeeding calendar quarter and allowed as a credit under paragraph (1) for such quarter.

**(4) Deduction allowed for credited amounts**

The credit allowed under paragraph (1) shall not be taken into account for purposes of determining the amount of any deduction allowed under chapter 1 for taxes imposed under subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 416; Sept. 1, 1954, ch. 1206, title II, §208(c), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, §202(c), 70 Stat. 845; Pub. L. 85-840, title IV, §401(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 87-64, title II, §201(c), June 30, 1961, 75 Stat. 141; Pub. L. 89-97, title I, §111(c)(6), title III, §321(c), July 30, 1965, 79 Stat. 343, 396; Pub. L. 90-248, title I, §109(a)(3), (b)(3), Jan. 2, 1968, 81 Stat. 836, 837; Pub. L. 92-5, title II, §204(a)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92-336, title II, §204(a)(3), (b)(3), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92-603, title I, §135(a)(3), (b)(3), Oct. 30, 1972, 86 Stat. 1363, 1364; Pub. L. 93-233, §6(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94-455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95-216, title I, §101(a)(2), (b)(2), title III, §§315(b), 317(b)(2), Dec. 20, 1977, 91 Stat. 1511, 1512, 1537, 1540; Pub. L. 98-21, title I, §123(a)(2), Apr. 20, 1983, 97 Stat. 88; Pub. L. 100-203, title IX, §9006(b)(1), Dec. 22, 1987, 101 Stat. 1330-289; Pub. L. 100-647, title VIII, §8016(a)(5), Nov. 10, 1988, 102 Stat. 3793; Pub. L. 108-203, title IV, §415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111-147, title I, §101(a), Mar. 18, 2010, 124 Stat. 72; Pub. L. 112-56, title II, §261(e)(2), Nov. 21, 2011, 125 Stat. 730; Pub. L. 113-295, div. A, title II, §221(a)(99)(B), Dec. 19, 2014, 128 Stat. 4051; Pub. L. 114-113, div. Q, title I, §121(c)(2), Dec. 18, 2015, 129 Stat. 3051.)

**REFERENCES IN TEXT**

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

The date of the enactment of this subsection, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 111-147, which was approved Mar. 18, 2010.

Section 101(b) of the Higher Education Act of 1965, referred to in subsec. (d)(2)(B), is classified to section 1001(b) of Title 20, Education.

**AMENDMENTS**

2015—Subsec. (f). Pub. L. 114-113 added subsec. (f).

2014—Subsec. (a). Pub. L. 113-295, §221(a)(99)(B)(i), substituted “6.2 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).” for “the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—” and table of rates.

Subsec. (b). Pub. L. 113-295, §221(a)(99)(B)(ii), substituted “1.45 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).” for “the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—”

“(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

“(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

“(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

“(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

“(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

“(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.”

2011—Subsec. (e). Pub. L. 112-56 added subsec. (e).

2010—Subsec. (d). Pub. L. 111-147 added subsec. (d).

2004—Subsec. (c). Pub. L. 108-203 substituted “exclusively to the laws applicable to” for “to taxes or contributions for similar purposes under”.

1988—Subsecs. (a), (b). Pub. L. 100-647 made technical correction to directory language of Pub. L. 100-203, §9006(b)(1), see 1987 Amendment note below.

1987—Subsecs. (a), (b). Pub. L. 100-203, as amended by Pub. L. 100-647, struck out “and (t)” after “3121(a)” in introductory provisions.

1983—Subsec. (a). Pub. L. 98-21 substituted table of rates for pars. (1) to (7) which had imposed a tax on every employer (1) with respect to wages paid during the calendar years 1974 through 1977 at the rate of 4.95 percent, (2) with respect to wages paid during the calendar year 1978 at the rate of 5.05 percent, (3) with respect to wages paid during the calendar years 1979 and 1980 at the rate of 5.08 percent, (4) with respect to wages paid during the calendar year 1981 at the rate of 5.35 percent, (5) with respect to wages paid during the calendar years 1982 through 1984 at the rate of 5.40 percent, (6) with respect to wages paid during the calendar years 1985 through 1989 at the rate of 5.70 percent, and (7) with respect to wages paid after Dec. 31, 1989, at the rate of 6.20 percent.

1977—Subsec. (a). Pub. L. 95-216, §§101(a)(2), 315(b), substituted “(as defined in section 3121(a) and (t))” for “(as defined in section 3121(a))” in provisions preceding par. (1), substituted “1974 through 1977” for “1974 through 2010” in par. (1), substituted “wages paid during the calendar year 1978, the rate shall be 5.05 percent” for “wages paid after December 31, 2010, the rate shall be 5.95 percent” in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95-216, §§101(b)(2), 315(b), substituted “(as defined in section 3121(a) and (t))” for “(as defined in section 3121(a))” in provisions preceding par. (1), substituted “wages paid during the calendar year 1978, the rate shall be 1.00 percent” for “wages paid during the calendar years 1978 through 1980, the rate shall be 1.10 percent”, in par. (2), substituted “wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent” for wages paid during the calendar years 1981 through 1985, the rate shall be 1.35 percent” in par. (3), substituted “wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent” for “wages paid after December 31, 1985, the rate shall be 1.50 percent” in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95-216, §317(b)(2), added subsec. (c).

1976—Subsec. (a). Pub. L. 94-455, §1903(a)(1)(A), redesignated pars. (5) and (6) as (1) and (2). Former pars. (1) to (4), which related to a tax rate of 3.8 percent with respect to wages received during the taxable year 1968, a tax rate of 4.2 percent with respect to wages received during the calendar year 1969 and 1970, a tax rate of 4.6 percent with respect to wages received during the calendar years 1971 and 1972, and a tax rate of 4.85 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

Subsec. (b). Pub. L. 94-455, §1903(a)(1)(B), redesignated pars. (3) to (6) as (1) to (4), respectively. Former pars. (1) and (2), which related to a tax rate of .60 percent with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972 and a tax rate of 1.0 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

1973—Subsec. (a)(4). Pub. L. 93-233, §6(a)(2), struck out provision for application of 4.85 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (a)(5). Pub. L. 93-233, §6(a)(2), increased rate of tax from 4.80 percent to 4.95 percent and substituted calendar year “1974” to “1978” as initial year for application of such rate.

Subsec. (a)(6). Pub. L. 93-233, §6(a)(2), increased rate of tax from 5.85 percent to 5.95 percent.

Subsec. (b)(2). Pub. L. 93-233, §6(b)(3), struck out provision for application of 1.0 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (b)(3). Pub. L. 93-233, §6(b)(3), incorporated former provision of par. (2) for taxation of wages received during calendar years 1974, 1975, 1976, and 1977, decreased the applicable rate of tax from 1.0 percent to 0.90 percent, and struck out provision for 1.25 percent rate of tax for calendar years 1978, 1979, and 1980.

Subsec. (b)(4). Pub. L. 93-233, §6(b)(3), incorporated former provision of par. (3) for taxation of wages received during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

Subsec. (b)(5). Pub. L. 93-233, §6(b)(3), incorporated former provision of par. (4) for taxation of wages received during calendar years 1981 through 1985 at applicable 1.35 percent rate of tax and struck out provision for 1.45 percent rate of tax for wages received after Dec. 31, 1985.

Subsec. (b)(6). Pub. L. 93-233, §6(b)(3), incorporated former provision of par. (5) for taxation of wages received after Dec. 31, 1985 and increased the applicable rate of tax from 1.45 percent to 1.50 percent.

1972—Subsec. (a)(3). Pub. L. 92-603, §135(a)(3)(A), substituted “the calendar years 1971 and 1972” for “any of the calendar years 1971 through 1977”.

Subsec. (a)(3) to (5). Pub. L. 92-336, §204(a)(3), substituted “any of the calendar years 1971 through 1977” for “the calendar years 1971 and 1972” in par. (3), “any of the calendar years 1978 through 2010” for “the calendar years 1973, 1974, and 1975” and “4.5” for “5.0” in par. (4), and “December 31, 2010” for “December 31, 1975” and “5.35” for “5.15” in par. (5).

Subsec. (a)(4). Pub. L. 92-603, §135(a)(3)(B), substituted “received during the calendar years 1973, 1974, 1975, 1976, and 1977, the rate shall be 4.85 percent;” for “received during any of the calendar years 1978 through 2010, the rate shall be 4.5 percent; and”.

Subsec. (a)(5). Pub. L. 92-603, §135(a)(3)(B), substituted “received during the calendar years 1978 through 2010, the rate shall be 4.80 percent; and” for “received after December 31, 2010, the rate shall be 5.35 percent”.

Subsec. (a)(6). Pub. L. 92-603, §135(a)(3)(B), added par. (6).

Subsec. (b)(2). Pub. L. 92-603, §135(b)(3), increased rate to 1.0 percent from 0.9 percent.

Subsec. (b)(2) to (5). Pub. L. 92-336, §204(b)(3), inserted references to 1976 and 1977 and substituted “0.9” for “0.65” in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted “1.0” for

“0.70” in par. (3), substituted references for the calendar years 1986 through 1992 for references to the calendars 1980 through 1986 and substituted “1.1” for “0.80” in par. (4), and substituted “1992” and “1986” and “1.2” for “0.9” in par. (5).

Subsec. (b)(3). Pub. L. 92-603, §135(b)(3), substituted “and 1980, the rate shall be 1.25 percent” for “1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.0 percent”.

Subsec. (b)(4). Pub. L. 92-603, §135(b)(3), substituted “1981, 1982, 1983, 1984, and 1985, the rate shall be 1.35 percent” for “1986, 1987, 1988, 1989, 1990, 1991, and 1992, the rate shall be 1.1 percent”.

Subsec. (b)(5). Pub. L. 92-603, §135(b)(3), substituted “1985, the rate shall be 1.45 percent” for “1992, the rate shall be 1.2 percent”.

1971—Subsec. (a)(4). Pub. L. 92-5 substituted “with respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 5.0 percent; and” for “with respect to wages paid after December 31, 1972, the rate shall be 5.0 percent”.

Subsec. (a)(5). Pub. L. 92-5 added par. (5).

1968—Subsec. (a)(1) to (4). Pub. L. 90-248, §109(a)(3), substituted “1968” and “3.8” for “1966” and “3.85” in par. (1) and “1969 and 1970” and “4.2” for “1967 and 1968” and “3.9” in par. (2), struck out reference to calendar years 1969 and 1970 from par. (3) and substituted therein “4.6” for “4.4”, and substituted “5.0” for “4.85” in par. (4).

Subsecs. (b)(1) to (5). Pub. L. 90-248, §109(b)(3), struck out par. (1) provision for employer rate of 0.35 percent of wages paid with respect to employment during calendar year 1966, redesignated pars. (2) to (6) as (1) to (5), struck out reference to “1967” in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89-97, §321(c), divided the total excise tax imposed under the entire section upon employers through a tax equal to percentages of wages paid by him into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance, and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 4½ percent to 4.20 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 4½ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 4½ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1968 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4½ percent to 4.90 percent the rate of total tax imposed by the entire section upon wages paid during the calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4½ percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975 (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 4½ percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 4½ percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate from 4½ percent to 5.65 percent for calendar years after December 31, 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89-97, §111(c)(6), struck out “, but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees” after “as defined in section 3121(b)”.

1961—Pub. L. 87-64 increased rate of tax for calendar year 1962 from 3 to 3½ percent, calendar years 1963 to

1965, inclusive, from 3½ to 3% percent, calendar years 1966 and 1967 from 4 to 4½ percent, calendar year 1968 from 4 to 4½ percent, and for calendar years after December 31, 1968, from 4½ to 4% percent.

1958—Pub. L. 85-840 increased rate of tax by substituting provisions imposing a tax of 2½ percent for calendar year 1959, 3 percent for calendar years 1960-62, 3½ percent for calendar years 1963-65, 4 percent for calendar years 1966-68, and 4½ percent for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼ percent for calendar years 1957-59, 2¾ percent for calendar years 1960-64, 3¼ percent for calendar years 1965-69, 3¾ percent for calendar years 1970-74, and 4¼ percent for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased rate of tax with respect to wages paid during calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased 3¼ percent rate of tax for calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-113 applicable to taxable years beginning after Dec. 31, 2015, see section 121(d)(3) of Pub. L. 114-113, set out as a note under section 38 of this title.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-56 applicable to individuals who begin work for the employer after Nov. 21, 2011, see section 261(g) of Pub. L. 112-56, set out as a note under section 51 of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-147 applicable to wages paid after Mar. 18, 2010, see section 101(e) of Pub. L. 111-147, set out as a note under section 51 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VIII, §8016(b), Nov. 10, 1988, 102 Stat. 3793, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 3121 and 3306 of this title, and sections 405, 410, and 411 of Title 42, The Public Health and Welfare] shall be effective on the date of the enactment of this Act [Nov. 10, 1988].

“(2) Any amendment made by this section to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.] or the Internal Revenue Code of 1986 as added or amended by a provision of a particular Public Law which is so referred to, shall be effective as though it had been included or reflected in the relevant provisions of that Public Law at the time of its enactment.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9006(c), Dec. 22, 1987, 101 Stat. 1330-289, provided that: “The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to tips received (and wages paid) on and after January 1, 1988.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 123(a)(3) of Pub. L. 98-21, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 101(a)(2), (b)(2) of Pub. L. 95-216 applicable with respect to remuneration paid or

received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95-216, set out as a note under section 1401 of this title.

Pub. L. 95-216, title III, §315(c), Dec. 20, 1977, 91 Stat. 1537, provided that: “The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to wages paid with respect to employment performed in months after December 1977.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after December 31, 1973, see section 6(c) of Pub. L. 93-233, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92-603 applicable only with respect to remuneration paid after Dec. 31, 1972, see section 135(c) of Pub. L. 92-603, set out as a note under section 1401 of this title.

Amendment by Pub. L. 92-336 applicable only with respect to remuneration paid after December 31, 1972, see section 204(c) of Pub. L. 92-336, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-5 applicable only with respect to remuneration paid after Dec. 31, 1971, see section 204(b) of Pub. L. 92-5, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90-248, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(6) of Pub. L. 89-97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act (section 3201 et seq. of this title) provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act (section 3101 et seq. of this title) provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 1395i-1 of Title 42, The Public Health and Welfare.

Amendment by section 321(c) of Pub. L. 89-97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89-97, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87-64, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401(d) of Pub. L. 85-840, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see sec-

tion 202(d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

### § 3112. 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 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 416.)

### [§ 3113. Repealed. Pub. L. 94-455, title XIX, § 1903(a)(2), Oct. 4, 1976, 90 Stat. 1806]

Section, added Aug. 1, 1956, ch. 836, title II, § 201(a)(1), 70 Stat. 839, related to a restriction on exemptions from taxation for District of Columbia credit unions with respect to the tax imposed by section 3111 of this title.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 3101 of this title.

### Subchapter C—General Provisions

Sec.	
3121.	Definitions.
3122.	Federal service.
3123.	Deductions as constructive payments.
3124.	Estimate of revenue reduction.
3125.	Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia.
3126.	Return and payment by governmental employer.
3127.	Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.
3128.	Short title.

#### AMENDMENTS

1988—Pub. L. 100-647, title VIII, § 8007(a)(2), Nov. 10, 1988, 102 Stat. 3782, added item 3127 and redesignated former item 3127 as 3128.

1986—Pub. L. 99-509, title IX, § 9002(a)(2), Oct. 21, 1986, 100 Stat. 1971, added item 3126 and redesignated former item 3126 as 3127.

Pub. L. 99-272, title XIII, § 13205(a)(2)(A)(iii), Apr. 7, 1986, 100 Stat. 315, inserted “States,” in item 3125.

1965—Pub. L. 89-97, title III, § 317(c)(3), July 30, 1965, 79 Stat. 389, inserted reference to the District of Columbia in item 3125.

1960—Pub. L. 86-778, title I, § 103(q)(2), Sept. 13, 1960, 74 Stat. 940, added item 3125 and redesignated former item 3125 as 3126.

### § 3121. Definitions

#### (a) Wages

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

(1) in the case of the taxes imposed by sections 3101(a) and 3111(a) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, 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 a 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 the contribution and benefit base (as determined under section 230 of the Social Security Act) 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) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term “wages” only payments which are received under a workman’s compensation law), or

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

(C) death, except that this paragraph 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;

[(3) Repealed. Pub. L. 98-21, title III, § 324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

(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,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), 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),

(E) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph 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,

(G) under a cafeteria plan (within the meaning of section 125) 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,

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof, or

(I) under a plan described in section 457(e)(11)(A)(ii) and maintained by an eligible employer (as defined in section 457(e)(1));

(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

(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;

(7)(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 subsection (x)) 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 subparagraph, 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 subsection (g)(5);

(8)(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;

[(9) Repealed. Pub. L. 98-21, title III, § 324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (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;

(11) 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 (determined without regard to section 274(n));

(12)(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;



(13) 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 (i) death, or (ii) 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;

(14) 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;

(15) 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 223(a) of the Social Security Act 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;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 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;

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

(18) 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, 129, 134(b)(4), or 134(b)(5);

(19) 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;

(20) 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;

(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights);

(22) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

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

(23) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

Nothing in the regulations prescribed for purposes of chapter 24 (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 chapter. Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

#### (b) Employment

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (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 for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by a child under the age of 18 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has

a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute in Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after

performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 105(e)(2)<sup>1</sup> of the Indian Self-Determination Act applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83

<sup>1</sup> See References in Text note below.

of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997<sup>2</sup> to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act;

(6) service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(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 thereby, except that this paragraph shall not apply in the case of—

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code); except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of

<sup>2</sup> So in original. Probably should be followed by a comma.

fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply,

(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than \$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term “retirement system” has the meaning given such term by section 218(b)(4) of the Social Security Act;

(8)(A) service 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, except that this

subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under subsection (w), other than service in an unrelated trade or business (within the meaning of section 513(a));

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and 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 of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the 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;

(14)(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;

(15) service performed in the employ of an international organization, except service which constitutes “employment” under subsection (y);

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

[(17) Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(99)(C)(i), Dec. 19, 2014, 128 Stat. 4052]

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a non-immigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));

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

(20) service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

(i) which does not exceed \$100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) domestic service in a private home of the employer which—

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

#### **(c) 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 (b)(9).

#### **(d) Employee**

For purposes of this chapter, the term “employee” means—

(1) any officer of a corporation; or

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

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term “employee” under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed; or

(4) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.

**(e) State, United States, and citizen**

For purposes of this chapter—

**(1) State**

The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

**(2) United States**

The term “United States” when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

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.

**(f) 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.

**(g) 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 any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm 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, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) 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; or

(5) on a farm operated for profit if such service is not in the course of the employer’s trade or business.

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.

**(h) American employer**

For purposes of this chapter, the term “American employer” means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

**(i) Computation of wages in certain cases**

**(1) Domestic service**

For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(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 chapter, 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)(7)(B).

**(2) Service in the uniformed services**

For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term “wages” shall, subject to the provisions of subsection (a)(1) of this section, include as such individual’s remuneration for such service only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.

**(3) Peace Corps volunteer service**

For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term “wages” shall, subject to the provisions of subsection (a)(1) of this section, include as such individual’s remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

**(4) Service performed by certain members of religious orders**

For purposes of this chapter, in any case where an individual is a member of a religious order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) 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)(1), 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 pursu-

ant 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.

**(5) Service performed by certain retired justices and judges**

For purposes of this chapter, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (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.

**(j) Covered transportation service**

For purposes of this chapter—

**(1) Existing transportation systems—General rule**

Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

**(2) Existing transportation systems—Cases in which no transportation employees, or only certain employees, are covered**

Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation sys-

tem shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

**(3) Transportation systems acquired after 1950**

All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

**(4) Definitions**

For purposes of this subsection—

(A) The term “general retirement system” means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term “political subdivision” includes an instrumentality of—

- (i) a State,
- (ii) one or more political subdivisions of a State, or
- (iii) a State and one or more of its political subdivisions.

**[(k) Repealed. Pub. L. 98-21, title I, § 102(b)(2), Apr. 20, 1983, 97 Stat. 71]**

**(l) Agreements entered into by American employers with respect to foreign affiliates**

**(1) Agreement with respect to certain employees of foreign affiliate**

The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by

the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (6)) by all employees who are citizens or residents of the United States, except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term “employment” or “wages”, as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign affiliate of such American employer. Such agreement shall be applicable with respect to citizens or residents of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign affiliate specified in the agreement. Such agreement shall provide—

(A) that the American employer shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the American employer will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

**(2) Effective period of agreement**

An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other affiliate and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other affiliate only after the calendar quarter in which such amendment is executed. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).

**(3) No termination of agreement**

No agreement under this subsection may be terminated, either in its entirety or with respect to any foreign affiliate, on or after June 15, 1989.



**(4) Deposits in trust funds**

For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary pursuant to the provisions of such agreement or of the regulations issued under this subsection, shall be considered wages subject to the taxes imposed by this chapter.

**(5) Overpayments and underpayments**

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary within two years from the time such overpayment was made.

**(6) Foreign affiliate defined**

For purposes of this subsection and section 210(a) of the Social Security Act—

**(A) In general**

A foreign affiliate of an American employer is any foreign entity in which such American employer has not less than a 10-percent interest.

**(B) Determination of 10-percent interest**

For purposes of subparagraph (A), an American employer has a 10-percent interest in any entity if such employer has such an interest directly (or through one or more entities)—

(i) in the case of a corporation, in the voting stock thereof, and

(ii) in the case of any other entity, in the profits thereof.

**(7) American employer as separate entity**

Each American employer which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

**(8) Regulations**

Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on American employers with respect to services

covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

**(m) Service in the uniformed services**

For purposes of this chapter—

**(1) Inclusion of service**

The term “employment” shall, notwithstanding the provisions of subsection (b) of this section, include—

(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed by an individual as a member of a uniformed service on inactive duty training.

**(2) Active duty**

The term “active duty” means “active duty” as described in paragraph (21) of section 101 of title 38, United States Code, except that it shall also include “active duty for training” as described in paragraph (22) of such section.

**(3) Inactive duty training**

The term “inactive duty training” means “inactive duty training” as described in paragraph (23) of such section 101.

**(n) Member of a uniformed service**

For purposes of this chapter, the term “member of a uniformed service” means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38, United States Code), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act, has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

**(o) Crew leader**

For purposes of this chapter, the term “crew leader” means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

**(p) Peace Corps volunteer service**

For purposes of this chapter, the term “employment” shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

**(q) Tips included for both employee and employer taxes**

For purposes of this chapter, tips received by an employee in the course of his employment shall be considered remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111). 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) or (if no statement including such tips is so furnished) at the time received; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary.

**(r) Election of coverage by religious orders**

**(1) Certificate of election by order**

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof. Such certificate of election shall provide that—

(A) such election of coverage by such order or subdivision shall be irrevocable;

(B) such election shall apply to all current and future members of such order, or in the case of a subdivision thereof to all current and future members of such order who belong to such subdivision;

(C) all services performed by a member of such an order or subdivision in the exercise of duties required by such order or subdivision shall be deemed to have been performed by such member as an employee of such order or subdivision; and

(D) the wages of each member, upon which such order or subdivision shall pay the taxes imposed by sections 3101 and 3111, will be determined as provided in subsection (i)(4).

**(2) Definition of member**

For purposes of this subsection, a member of a religious order means any individual who is subject to a vow of poverty as a member of such order and who performs tasks usually required (and to the extent usually required) of an active member of such order and who is not considered retired because of old age or total disability.

**(3) Effective date for election**

(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8) and for purposes of section 210(a)(8) of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

(B) If a certificate of election filed pursuant to this subsection is effective for one or more calendar quarters prior to the quarter in which such certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

**[(4) Repealed. Pub. L. 98-21, title I, § 102(b)(3)(B), Apr. 20, 1983, 97 Stat. 71]**

**(s) Concurrent employment by two or more employers**

For purposes of sections 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

**[(t) Repealed. Pub. L. 100-203, title IX, § 9006(b)(2), Dec. 22, 1987, 101 Stat. 1330-289]**

**(u) Application of hospital insurance tax to Federal, State, and local employment**

**(1) Federal employment**

For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.

**(2) State and local employment**

For purposes of the taxes imposed by sections 3101(b) and 3111(b)—

**(A) In general**

Except as provided in subparagraphs (B) and (C), subsection (b) shall be applied without regard to paragraph (7) thereof.

**(B) Exception for certain services**

Service shall not be treated as employment by reason of subparagraph (A) if—

(i) the service is included under an agreement under section 218 of the Social Security Act, or

(ii) the service is performed—

(I) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(II) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(III) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(IV) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training,

(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than \$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or

before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year, or

(VI) by an individual in a position described in section 1402(c)(2)(E).

As used in this subparagraph, the terms “State” and “political subdivision” have the meanings given those terms in section 218(b) of the Social Security Act.

**(C) Exception for current employment which continues**

Service performed for an employer shall not be treated as employment by reason of subparagraph (A) if—

(i) such service would be excluded from the term “employment” for purposes of this chapter if subparagraph (A) did not apply;

(ii) such service is performed by an individual—

(I) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(II) who is a bona fide employee of that employer on March 31, 1986, and

(III) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(iii) the employment relationship with that employer has not been terminated after March 31, 1986.

**(D) Treatment of agencies and instrumentalities**

For purposes of subparagraph (C), under regulations—

(i) All agencies and instrumentalities of a State (as defined in section 218(b) of the Social Security Act) or of the District of Columbia shall be treated as a single employer.

(ii) All agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in clause (i).

**(3) Medicare qualified government employment**

For purposes of this chapter, the term “medicare qualified government employment” means service which—

(A) is employment (as defined in subsection (b)) with the application of paragraphs (1) and (2), but

(B) would not be employment (as so defined) without the application of such paragraphs.

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

**(1) Certain employer contributions treated as wages**

Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term “wages”—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3) or consisting of designated Roth contributions (as defined in section 402A(c)), or

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

**(2) Treatment of certain nonqualified deferred compensation plans**

**(A) In general**

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

- (i) when the services are performed, or
- (ii) when there is no substantial risk of forfeiture of the rights to such amount.

The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)) or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985.

**(B) Taxed only once**

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

**(C) Nonqualified deferred compensation plan**

For purposes of this paragraph, the term “nonqualified deferred compensation plan” means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

**(3) Exempt governmental deferred compensation plan**

For purposes of subsection (a)(5), the term “exempt governmental deferred compensation plan” means any plan providing for deferral of compensation established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. Such term shall not include—

- (A) any plan to which section 83, 402(b), 403(c), 457(a), or 457(f)(1) applies,
- (B) any annuity contract described in section 403(b), and
- (C) the Thrift Savings Fund (within the meaning of subchapter III of chapter 84 of title 5, United States Code).

**(w) Exemption of churches and qualified church-controlled organizations**

**(1) General rule**

Any church or qualified church-controlled organization (as defined in paragraph (3)) may make an election within the time period described in paragraph (2), in accordance with such procedures as the Secretary determines to be appropriate, that services performed in the employ of such church or organization

shall be excluded from employment for purposes of title II of the Social Security Act and this chapter. An election may be made under this subsection only if the church or qualified church-controlled organization states that such church or organization is opposed for religious reasons to the payment of the tax imposed under section 3111.

**(2) Timing and duration of election**

An election under this subsection must be made prior to the first date, more than 90 days after July 18, 1984, on which a quarterly employment tax return for the tax imposed under section 3111 is due, or would be due but for the election, from such church or organization. An election under this subsection shall apply to current and future employees, and shall apply to service performed after December 31, 1983. The election may be revoked by the church or organization under regulations prescribed by the Secretary. The election shall be revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Any revocation under the preceding sentence shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.

**(3) Definitions**

(A) For purposes of this subsection, the term “church” means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(B) For purposes of this subsection, the term “qualified church-controlled organization” means any church-controlled tax-exempt organization described in section 501(c)(3), other than an organization which—

- (i) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and
- (ii) normally receives more than 25 percent of its support from either (I) governmental sources, or (II) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.

**(x) Applicable dollar threshold**

For purposes of subsection (a)(7)(B), the term “applicable dollar threshold” means \$1,000. In the case of calendar years after 1995, the Commissioner of Social Security shall adjust such \$1,000 amount at the same time and in the same manner as under section 215(a)(1)(B)(ii) of the Social Security Act with respect to the amounts referred to in section 215(a)(1)(B)(i) of such Act, except that, for purposes of this paragraph, 1993

shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) of such Act. If any amount as adjusted under the preceding sentence is not a multiple of \$100, such amount shall be rounded to the next lowest multiple of \$100.

**(y) Service in the employ of international organizations by certain transferred Federal employees**

**(1) In general**

For purposes of this chapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5, United States Code, shall constitute “employment” if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted “employment” under subsection (b) for purposes of the taxes imposed by sections 3101(a) and 3111(a), and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

**(2) Definitions**

For purposes of this subsection—

**(A) Federal agency**

The term “Federal agency” means an agency, as defined in section 3581(1) of title 5, United States Code.

**(B) International organization**

The term “international organization” has the meaning provided such term by section 3581(3) of title 5, United States Code.

**(z) Treatment of certain foreign persons as American employees**

**(1) In general**

If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

**(2) Domestically controlled group of entities**

For purposes of this subsection—

**(A) In general**

The term “domestically controlled group of entities” means a controlled group of entities the common parent of which is a domestic corporation.

**(B) Controlled group of entities**

The term “controlled group of entities” means a controlled group of corporations as defined in section 1563(a)(1), except that—

(i) “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

**(3) Liability of common parent**

In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

**(4) Provisions preventing double taxation**

**(A) Agreements**

Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (l).

**(B) Equivalent foreign taxation**

Paragraph (1) shall not apply to any services if the employer establishes to the satisfaction of the Secretary that the remuneration paid by such employer for such services is subject to a tax imposed by a foreign country which is substantially equivalent to the taxes imposed by this chapter.

**(5) Cross reference**

**For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).**

(Aug. 16, 1954, ch. 736, 68A Stat. 417; Sept. 1, 1954, ch. 1206, title II, §§204(a), (b), 205(a)–(e), 206(a), 207, 209, 68 Stat. 1091–1094; Aug. 1, 1956, ch. 836, title I, §§103(j), 121(d), title II, §§201(b)–(d), (e)(1), (h)(1), (2), (j)–(l), 70 Stat. 824, 839–841, 843; Aug. 1, 1956, ch. 837, title IV, §§410, 411(a), 70 Stat. 878; Pub. L. 85–840, title IV, §§402(b), 404(a), 405(a), (b), Aug. 28, 1958, 72 Stat. 1042, 1044–1046; Pub. L. 85–866, title I, §69, Sept. 2, 1958, 72 Stat. 1659; Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–168, title I, §104(h), title II, §202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86–624, §18(c), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title I, §§103(n)–(p), 104(b), 105(a), Sept. 13, 1960, 74 Stat. 938, 939, 942; Pub. L. 87–256, §110(e)(1), Sept. 21, 1961, 75 Stat. 536; Pub. L. 87–293, title II, §202(a)(1), (2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, §220(c)(2), Feb. 26, 1964, 78 Stat. 62; Pub. L. 88–650, §4(b), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III, §§311(b)(4), (5), 313(c)(3), (4), 316(a)(1), (b), 317(b), 320(b)(2), July 30, 1965, 79 Stat. 381, 383, 386, 388, 393; Pub. L. 90–248, title I, §§108(b)(2), 123(b), title IV, §403(i), title V, §504(a), Jan. 2, 1968, 81 Stat. 835, 845, 932, 934; Pub. L. 91–172, title IX, §943(c)(1)–(3), Dec. 30,

1969, 83 Stat. 728; Pub. L. 92-5, title II, §203(b)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92-336, title II, §203(b)(2), July 1, 1972, 86 Stat. 419; Pub. L. 92-603, title I, §§104(i), 122(b), 123(a)(2), (b), (c)(2), 128(b), 129(a)(2), 138(b), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1358, 1359, 1365; Pub. L. 93-66, title II, §203(b)(2), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93-233, §5(b)(2), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94-455, title XII, §1207(e)(1)(A), title XIX, §§1903(a)(3), 1906(b)(13)(A), (C), Oct. 4, 1976, 90 Stat. 1706, 1807, 1834; Pub. L. 94-563, §1(b), (c), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95-216, title III, §§312(a), (b), (d), (f), (g), 314(a), 315(a), 356(a)-(d), Dec. 20, 1977, 91 Stat. 1532-1536, 1555; Pub. L. 95-472, §3(b), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95-600, title I, §164(b)(3), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96-222, title I, §101(a)(10)(B)(i), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96-499, title XI, §1141(a)(1), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97-34, title I, §124(e)(2)(A), Aug. 13, 1981, 95 Stat. 200; Pub. L. 97-123, §3(b), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 97-248, title II, §278(a)(1), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98-21, title I, §§101(b), (c)(2), 102(b), title III, §§321(a), (e)(1), 322(a)(2), 323(a)(1), 324(a), 327(a)(1), (b)(1), 328(a), Apr. 20, 1983, 97 Stat. 69, 70, 118, 119, 121, 122, 126-128; Pub. L. 98-369, div. A, title I, §67(c), title IV, §491(d)(36), title V, §531(d)(1)(A), div. B, title VI, §§2601(b), 2603(a)(2), (b), 2661(o)(3), 2663(i), (j)(5)(C), July 18, 1984, 98 Stat. 587, 851, 884, 1124, 1128, 1159, 1169, 1171; Pub. L. 99-221, §3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99-272, title XII, §12112(b), title XIII, §§13205(a)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 288, 313, 327; Pub. L. 99-335, title III, §304(b), June 6, 1986, 100 Stat. 606; Pub. L. 99-509, title IX, §9002(b)(1)(A), (2)(A), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99-514, title I, §122(e)(1), title XI, §§1108(g)(7), 1147(b), 1151(d)(2)(A), title XVIII, §§1882(c), 1883(a)(11)(B), 1895(b)(18)(A), 1899A(38)-(40), Oct. 22, 1986, 100 Stat. 2112, 2435, 2494, 2505, 2915, 2916, 2935, 2960; Pub. L. 100-203, title IX, §§9001(b), 9002(b), 9003(a)(2), 9004(b), 9005(b), 9006(a), (b)(2), 9023(d), Dec. 22, 1987, 101 Stat. 1330-286 to 1330-289, 1330-296; Pub. L. 100-647, title I, §§1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(22)(A), (23)(A), 1018(r)(2)(A), (u)(35), title III, §3043(c)(2), title VIII, §§8015(b)(2), (c)(2), 8016(a)(3)(A), (4)(A), (C), 8017(b), Nov. 10, 1988, 102 Stat. 3351, 3352, 3461, 3485, 3486, 3586, 3592, 3642, 3791-3793; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title X, §10201(a), (b)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101-508, title XI, §§11331(a), 11332(b), Nov. 5, 1990, 104 Stat. 1388-467, 1388-469; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102-318, title V, §521(b)(34), July 3, 1992, 106 Stat. 312; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XIII, §13207(a), Aug. 10, 1993, 107 Stat. 467; Pub. L. 103-178, title II, §204(c), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103-296, title I, §108(h)(2), title III, §§303(a)(2), (b)(2), 319(a)(1), (5), 320(a)(1)(C), Aug. 15, 1994, 108 Stat. 1487, 1519, 1533-1535; Pub. L. 103-387, §2(a)(1)(A)-(C), Oct. 22, 1994, 108 Stat. 4071; Pub. L. 104-188, title I, §§1116(a)(1)(A), (B), 1421(b)(8)(A), 1458(b)(1), Aug. 20, 1996, 110 Stat. 1762, 1798, 1819; Pub. L. 105-33, title XI, §11246(b)(2)(A), as added Pub. L. 105-277, div. A, §101(h) [title VIII, §802(a)(2)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-532; Pub. L. 105-61, title VI,

§642(d)(2), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105-206, title VI, §6023(13), July 22, 1998, 112 Stat. 825; Pub. L. 106-554, §1(a)(7) [title III, §319(15)], Dec. 21, 2000, 114 Stat. 2763, 2763A-647; Pub. L. 108-121, title I, §106(b)(2), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108-203, title IV, §423(a), (c), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108-357, title II, §251(a)(1)(A), title III, §320(b)(1), title VIII, §802(c)(1), Oct. 22, 2004, 118 Stat. 1458, 1473, 1568; Pub. L. 108-375, div. A, title V, §585(b)(2)(B), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109-280, title VIII, §854(c)(8), Aug. 17, 2006, 120 Stat. 1018; Pub. L. 110-172, §8(a)(2), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110-245, title I, §115(a)(1), title III, §302(a), June 17, 2008, 122 Stat. 1636, 1647; Pub. L. 110-458, title I, §108(k)(1), Dec. 23, 2008, 122 Stat. 5110; Pub. L. 113-295, div. A, title II, §221(a)(19)(B)(iv), (99)(C)(i), Dec. 19, 2014, 128 Stat. 4040, 4052.)

## REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (15), (b), (d)(4), (j)(2)(D), (4)(B), (l)(1), (4), (6), (r)(3)(A), (u), (w)(1), and (x), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 201, 210, 215, 218, 223, 230, and 233 of the Act are classified to sections 401, 410, 415, 418, 423, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Section 105(e)(2) of the Indian Self-Determination Act, referred to in subsec. (b)(5)(B)(i)(V), was renumbered section 104(e)(2) of that Act by Pub. L. 100-472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290, without corresponding amendment to this section. Section 104(e)(2) of the Indian Self-Determination Act is classified to section 5323(e)(2) of Title 25, Indians. Section 105 of that Act is classified to section 5324 of Title 25.

Level V of the Executive Schedule, referred to in subsec. (b)(5)(D)(iii), is set out in section 5316 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (b)(5)(H)(i), is section 301 of Pub. L. 99-335, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

The Federal Employees' Retirement System Open Enrollment Act of 1997, referred to in subsec. (b)(5)(H)(i), is section 642 of Pub. L. 105-61, title VI, Oct. 10, 1997, 111 Stat. 1318, which is classified principally to a note under section 8331 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Tables.

The Foreign Service Act of 1980, referred to in subsec. (b)(5)(H)(ii), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. Section 860 of the Act is classified to section 4071i of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (b)(18), (19), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 15(g) of the Agricultural Marketing Act, referred to in subsec. (g)(3), is classified to section 1141j of Title 12, Banks and Banking.

The Peace Corps Act, referred to in subsecs. (i)(3), (p), is Pub. L. 87-293, title I, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of the Peace Corps Act are

classified to sections 2504 and 2505 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (j)(4)(B), was comprised of sections 1400 to 1636 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(a)(3) of this title for applicability of chapter 9 of former Title 26. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The Military Selective Service Act, referred to in subsec. (n)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to chapter 49 (§ 3801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

#### CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 3121 of act Aug. 16, 1954, as amended by section 101(b)(1) of Pub. L. 98-21, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

#### AMENDMENTS

2014—Subsec. (a)(17). Pub. L. 113-295, § 221(a)(19)(B)(iv), struck out par. (17) 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 (relating to amounts received under qualified group legal services plans);”.

Subsec. (b)(17). Pub. L. 113-295, § 221(a)(99)(C)(i), struck out par. (17) which read as follows: “service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;”.

2008—Subsec. (a)(23). Pub. L. 110-245, § 115(a)(1), added par. (23).

Subsec. (b)(5)(E). Pub. L. 110-458 struck out “or special trial judge” before “of the United States Tax Court”.

Subsec. (z). Pub. L. 110-245, § 302(a), added subsec. (z).

2007—Subsec. (v)(1)(A). Pub. L. 110-172, which directed amendment of subpar. (A) by inserting “or consisting of designated Roth contributions (as defined in section 402A(c))” before comma at end, was executed by making the insertion before “, or”, to reflect the probable intent of Congress.

2006—Subsec. (b)(5)(E). Pub. L. 109-280 inserted “or special trial judge” before “of the United States Tax Court”.

2004—Subsec. (a)(7)(B). Pub. L. 108-203, § 423(a), substituted “on a farm operated for profit” for “described in subsection (g)(5)”.

Subsec. (a)(18). Pub. L. 108-375 substituted “134(b)(4), or 134(b)(5)” for “or 134(b)(4)”.

Subsec. (a)(20). Pub. L. 108-357, § 320(b)(1), inserted “108(f)(4),” after “74(c),”.

Subsec. (a)(22). Pub. L. 108-357, § 251(a)(1)(A), added par. (22).

Subsec. (g)(5). Pub. L. 108-203, § 423(c), struck out “or is domestic service in a private home of the employer” after “employer’s trade or business”.

Subsec. (v)(2)(A). Pub. L. 108-357, § 802(c)(1), inserted “or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985” before period at end.

2003—Subsec. (a)(18). Pub. L. 108-121 substituted “, 129, or 134(b)(4)” for “or 129”.

2000—Subsec. (a)(5)(G). Pub. L. 106-554 substituted a comma for the semicolon at end.

1998—Subsec. (a)(5)(F). Pub. L. 105-206, § 6023(13)(A), which directed the substitution of a comma for the semicolon at end of subpar. (F), could not be executed because a semicolon did not appear at end of subpar. (F).

Subsec. (a)(5)(G). Pub. L. 105-206, § 6023(13)(B), struck out “or” at end.

Subsec. (a)(5)(I). Pub. L. 105-206, § 6023(13)(C), substituted a semicolon for the period at end.

Subsec. (b)(7)(C). Pub. L. 105-277 added Pub. L. 105-33, § 11246(b)(2)(A). See 1997 Amendment note below.

1997—Subsec. (b)(5)(H)(i). Pub. L. 105-61 substituted “1986,” for “1986 or” and inserted “or the Federal Employees’ Retirement System Open Enrollment Act of 1997” after “(50 U.S.C. 2157),”.

Subsec. (b)(7)(C). Pub. L. 105-33, § 11246(b)(2)(A), as added by Pub. L. 105-277, inserted “(other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code)” after “law of the United States” in introductory provisions.

1996—Subsec. (a)(5)(F). Pub. L. 104-188, § 1421(b)(8)(A), struck out “or” at end.

Subsec. (a)(5)(G). Pub. L. 104-188, § 1458(b)(1), which directed that subpar. (G) be amended by striking “(or)” at the end, could not be executed because “(or)” did not appear.

Pub. L. 104-188, § 1421(b)(8)(A), inserted “or” at end.

Subsec. (a)(5)(H). Pub. L. 104-188, § 1458(b)(1), inserted “or” at end.

Pub. L. 104-188, § 1421(b)(8)(A), added subpar. (H).

Subsec. (a)(5)(I). Pub. L. 104-188, § 1458(b)(1), added subpar. (I).

Subsec. (b). Pub. L. 104-188, § 1116(a)(1)(A), inserted closing provisions “For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.”

Subsec. (b)(20)(A). Pub. L. 104-188, § 1116(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “such individual does not receive any cash remuneration (other than as provided in subparagraph (B)).”

1994—Subsec. (a)(7)(B). Pub. L. 103-387, § 2(a)(1)(A), 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 subparagraph, the term ‘domestic service in a private home of the employer’ does not include service described in subsection (g)(5);”.

Subsec. (b)(7)(F)(iv). Pub. L. 103-296, § 303(a)(2), substituted “\$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year” for “\$100”.

Subsec. (b)(10)(B). Pub. L. 103-296, § 108(h)(2), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

Subsec. (b)(15). Pub. L. 103-296, § 319(a)(5), inserted “, except service which constitutes ‘employment’ under subsection (y)” after “international organization”.

Subsec. (b)(19). Pub. L. 103-296, § 320(a)(1)(C), substituted “(J), (M), or (Q)” for “(J), or (M)” in two places.

Subsec. (b)(21). Pub. L. 103-387, § 2(a)(1)(C), added par. (21).

Subsec. (u)(2)(B)(ii)(V). Pub. L. 103-296, § 303(b)(2), substituted “\$1,000 with respect to service performed dur-

ing any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year” for “\$100”.

Subsec. (x). Pub. L. 103-387, §2(a)(1)(B), added subsec. (x).

Subsec. (y). Pub. L. 103-296, §319(a)(1), added subsec. (y).

1993—Subsec. (a)(1). Pub. L. 103-66, §13207(a)(1), inserted “in the case of the taxes imposed by sections 3101(a) and 3111(a)” after “(1)”, substituted “contribution and benefit base (as determined under section 230 of the Social Security Act)” for “applicable contribution base (as determined under subsection (x))” in two places, and substituted “such contribution and benefit base” for “such applicable contribution base”.

Subsec. (b)(5)(H)(i). Pub. L. 103-178 substituted “section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157)” for “section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

Subsec. (x). Pub. L. 103-66, §13207(a)(2), struck out subsec. (x) which defined parameters of the applicable contribution base for purposes of this chapter.

1992—Subsec. (b)(5)(E). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

Subsec. (v)(1)(A). Pub. L. 102-318 substituted “402(e)(3)” for “402(a)(8)”.

1990—Subsec. (a)(1). Pub. L. 101-508, §11331(a)(1), substituted “applicable contribution base (as determined under subsection (x))” for “contribution and benefit base (as determined under section 230 of the Social Security Act)” wherever appearing and “such applicable contribution base” for “such contribution and benefit base”.

Subsec. (b)(7)(F). Pub. L. 101-508, §11332(b), added subpar. (F).

Subsec. (x). Pub. L. 101-508, §11331(a)(2), added subsec. (x).

1989—Subsec. (l)(1). Pub. L. 101-239, §10201(b)(3), substituted “paragraph (6)” for “paragraph (8)” in introductory provisions.

Subsec. (l)(2). Pub. L. 101-239, §10201(a)(1), inserted at end “Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).”

Subsec. (l)(3). Pub. L. 101-239, §10201(a)(2), (3), added par. (3) and struck out former par. (3) relating to termination of period by American employer.

Subsec. (l)(4). Pub. L. 101-239, §10201(a)(2), (4), redesignated par. (6) as (4) and struck out former par. (4) relating to termination of period by Secretary.

Subsec. (l)(5). Pub. L. 101-239, §10201(a)(2), (4), redesignated par. (7) as (5) and struck out former par. (5) relating to no renewal of agreement.

Subsec. (l)(6) to (10). Pub. L. 101-239, §10201(a)(4), redesignated pars. (6) to (10) as (4) to (8), respectively.

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

1988—Subsec. (a)(5)(G). Pub. L. 100-647, §1011B(a)(23)(A), 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 “section 125”.

Subsec. (a)(8)(B). Pub. L. 100-647, §8017(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “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;”.

Subsec. (a)(11). Pub. L. 100-647, §1001(g)(4)(B)(i), inserted “(determined without regard to section 274(n))” after “section 217”.

Subsec. (a)(21). Pub. L. 100-647, §3043(c)(2), added par. (21).

Subsec. (b)(5). Pub. L. 100-647, §8015(c)(2), inserted “any such service performed on or after any date on which such individual performs” after “with respect to” in provision preceding subpar. (C).

Subsec. (b)(5)(H). Pub. L. 100-647, §8015(b)(2), amended subpar. (H) generally. Prior to amendment, subparagraph (H) read as follows: “service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees’ Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5, United States Code;”.

Subsec. (b)(19). Pub. L. 100-647, §1001(d)(2)(C)(i), substituted “(F), (J), or (M)” for “(F) or (J)” in two places.

Subsec. (b)(20). Pub. L. 100-647, §8016(a)(4)(A), (C), made technical correction to directory language of Pub. L. 99-272, §13303(c)(2), see 1986 Amendment note below.

Subsec. (d)(3), (4). Pub. L. 100-647, §8016(a)(3)(A), redesignated par. (4) as (3) and substituted “; or” for a period at the end, and redesignated par. (3) as (4), substituted a period for “; or” at the end, and moved redesignated par. (4) to the end of the subsection.

Subsec. (u)(2)(B)(ii)(VI). Pub. L. 100-647, §1018(r)(2)(A), added subcl. (VI).

Subsec. (v)(3)(A). Pub. L. 100-647, §1011(e)(8), substituted “457(f)(1)” for “457(e)(1)”.

Subsec. (v)(3)(C). Pub. L. 100-647, §1018(u)(35), substituted “Savings” for “Saving”.

Subsec. (x). Pub. L. 100-647, §1011B(a)(22)(A), added subsec. (x) relating to benefits provided under certain employee benefit plans.

1987—Subsec. (a)(2)(C). Pub. L. 100-203, §9003(a)(2), substituted “death, except that this paragraph 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” for “death”.

Subsec. (a)(5)(F). Pub. L. 100-203, §9023(d)(1), substituted a comma for semicolon before “or” at end.

Subsec. (a)(5)(G). Pub. L. 100-203, §9023(d)(2), substituted a semicolon for comma at end.

Subsec. (a)(8)(B)(ii). Pub. L. 100-203, §9002(b), added cl. (ii) and struck out former cl. (ii) which read as follows: “the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis;”.

Subsec. (b)(3)(A). Pub. L. 100-203, §9005(b)(1), substituted “18” for “21”.

Pub. L. 100-203, §9004(b)(1), struck out “performed by an individual in the employ of his spouse, and service” after “service”.

Subsec. (b)(3)(B). Pub. L. 100-203, §9005(b)(2), inserted “under the age of 21 in the employ of his father or mother, or performed by an individual” after first reference to “individual”.

Pub. L. 100-203, §9004(b)(2), inserted introductory provisions and struck out former introductory provisions which read as follows: “service not in the course of the employer’s trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—”.

Subsec. (i)(2). Pub. L. 100-203, §9001(b)(2), substituted “only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his



compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.” for “only his basic pay as described in chapter 3 and section 1009 of title 37, United States Code.”

Subsec. (m)(1). Pub. L. 100-203, §9001(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘employment’ shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.”

Subsec. (q). Pub. L. 100-203, §9006(a), in heading substituted “both employee and employer taxes” for “employee taxes”, and in text struck out “other than for purposes of the taxes imposed by section 3111” after “of this chapter”, substituted “remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)” for “remuneration for employment”, and inserted before period at end “; except that, in determining the employer’s liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary”.

Subsec. (t). Pub. L. 100-203, §9006(b)(2), struck out subsec. (t) which related to special rule for determining wages subject to employer tax in case of certain employers whose employees receive income from tips.

1986—Subsec. (a)(5)(C). Pub. L. 99-514, §1108(g)(7), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “under a simplified employee pension 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) for such payment.”

Subsec. (a)(5)(G). Pub. L. 99-514, §1151(d)(2)(A), added subpar. (G).

Subsec. (a)(8). Pub. L. 99-514, §1883(a)(11)(B), realigned margin of subpar. (B).

Subsec. (a)(20). Pub. L. 99-514, §122(e)(1), inserted reference to section 74(c).

Subsec. (b)(5)(H). Pub. L. 99-335 added subpar. (H).

Subsec. (b)(7)(E). Pub. L. 99-509, §9002(b)(1)(A), added subpar. (E).

Subsec. (b)(20). Pub. L. 99-272, §13303(c)(2), as amended by Pub. L. 100-647, §8016(a)(4)(A), (C), inserted “(other than service described in paragraph (3)(A))” after “service”.

Subsec. (d)(3), (4). Pub. L. 99-509, §9002(b)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(5). Pub. L. 99-272, §12112(b), substituted “shall not include” for “shall, subject to the provisions of subsection (a)(1) of this section, include”.

Subsec. (u). Pub. L. 99-272, §13205(a)(1), amended subsec. (u) generally, substantially expanding and revising its provisions by extending the application of hospital insurance tax to State and local employment.

Subsec. (u)(2)(B)(ii)(V). Pub. L. 99-514, §1895(b)(18)(A), added subcl. (V).

Subsec. (v)(2)(A)(ii). Pub. L. 99-514, §1899A(38), substituted “forfeiture” for “forefeiture”.

Subsec. (v)(3)(C). Pub. L. 99-514, §1147(b), added subpar. (C).

Subsec. (w)(1). Pub. L. 99-514, §1899A(39), substituted “this chapter” for “chapter 21 of this Code” in first sentence.

Subsec. (w)(2). Pub. L. 99-514, §1882(c), substituted last three sentences for former last two sentences which read as follows: “The election may not be revoked by the church or organization, but shall be permanently revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for

such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Such revocation shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.”

Pub. L. 99-514, §1899A(40), substituted “July 18, 1984” for “the date of the enactment of this subsection” in first sentence.

1985—Subsec. (b)(5)(B)(i)(V). Pub. L. 99-221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98-369, §531(d)(1)(A)(i), inserted “(including benefits)” before “paid in any medium” in introductory provisions.

Subsec. (a)(5)(C) to (G). Pub. L. 98-369, §491(d)(36), struck out subpar. (C) which provided: “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),” and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (a)(20). Pub. L. 98-369, §531(d)(1)(A)(ii), added par. (20).

Subsec. (b)(1). Pub. L. 98-369, §2663(i)(1), struck out “(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461-1468), or (B)”.

Subsec. (b)(5)(B). Pub. L. 98-369, §2601(b)(1), in amending subpar. (B) generally, substituted provision broadening social security coverage for newly hired Federal civilian employees effective with remuneration paid after Dec. 31, 1983, by providing that persons transferring from other government service to civilian service be covered under social security, unless the other service was in an international organization, or the person is returning to civilian service after temporary military or reserve duty and is exercising his reemployment rights under chapter 43 of title 38.

Subsec. (b)(5)(C) to (G). Pub. L. 98-369, §2601(b)(2), substituted subpar. designations (C) to (G) for former designations (i) to (v), respectively, in subpar. (D), as so redesignated, redesignated cls. (I) to (III) as (i) to (iii), respectively, and amended generally, subpar. (G), as so redesignated, designating provision relating to service performed by an individual who is not subject to subchapter III of chapter 83 of title 5 as cl. (i), and in cl. (i) as so designated, inserting reference to another retirement system established by a law of the United States for Federal employees, other than for members of the uniformed services and adding cls. (ii) and (iii), and provision for determining for purposes of this subparagraph whether an individual is subject to subchapter III of chapter 83 of title 5 or any other retirement system.

Subsec. (b)(8). Pub. L. 98-369, §2603(a)(2), designated existing provisions as subpar. (A), substituted “this subparagraph” for “this paragraph”, and added subpar. (B).

Subsec. (b)(10)(B). Pub. L. 98-369, §2663(j)(5)(C), substituted “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare”.

Subsec. (i)(2). Pub. L. 98-369, §2663(i)(2), substituted “chapter 3 and section 1009 of title 37, United States Code” for “section 102(10) of the Servicemen’s and Veterans’ Survivor Benefits Act”.

Subsec. (m)(2). Pub. L. 98-369, §2663(i)(3), substituted “paragraph (21) of section 101 of title 38, United States Code” for “section 102 of the Servicemen’s and Veterans’ Survivor Benefits Act” and “paragraph (22) of such section” for “such section”.

Subsec. (m)(3). Pub. L. 98-369, §2663(i)(4), substituted “paragraph (23) of such section 101” for “such section 102”.

Subsec. (n). Pub. L. 98-369, §2663(i)(5), in provision preceding par. (1) substituted “a reserve component as defined in section 101(27) of title 38, United States Code” for “a reserve component of a uniformed service as defined in section 102(3) of the Servicemen’s and Veterans’ Survivor Benefits Act”, and inserted “, the National Oceanic and Atmospheric Administration Corps,”.

Subsec. (n)(5). Pub. L. 98-369, § 2663(i)(5)(C), substituted “military, naval, or air” for “military or naval” in two places.

Subsec. (n)(5)(B). Pub. L. 98-369, § 2663(i)(5)(D), substituted “Military Selective Service Act” for “Universal Military Training and Service Act”.

Subsec. (v)(1)(B). Pub. L. 98-369, § 2661(o)(3), substituted “section 414(h)(2) where the pick up referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)” for “section 414(h)(2)”.

Subsec. (v)(2)(A). Pub. L. 98-369, § 67(c), inserted provision that the preceding sentence shall not apply to any excess parachute payment (as defined in section 2801G(b)).

Subsec. (w). Pub. L. 98-369, § 2603(b), added subsec. (w). 1983—Subsec. (a). Pub. L. 98-21, § 327(b)(1), inserted in text following last numbered paragraph a provision that nothing in the regulations prescribed for purposes of chapter 24 (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 regulations prescribed for purposes of this chapter.

Pub. L. 98-21, § 324(a)(3)(D), substituted reference to subpar. (A) of par. (2) for reference to subpar. (B) thereof in text following last numbered paragraph.

Subsec. (a)(2). Pub. L. 98-21, § 324(a)(3)(A), struck out “(A) retirement, or”, and redesignated subpars. (B) to (D) as (A) to (C), respectively.

Subsec. (a)(3). Pub. L. 98-21, § 324(a)(3)(B), struck out par. (3) 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. (a)(5)(D). Pub. L. 98-21, § 328(a), substituted “section 219(b)(2)” for “section 219”.

Subsec. (a)(5)(E) to (G). Pub. L. 98-21, § 324(a)(2), added subpars. (E) to (G).

Subsec. (a)(9). Pub. L. 98-21, § 324(a)(3)(B), struck out par. (9) 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 such employee did not work for the employer in the period for which such payment was made.

Subsec. (a)(13)(A)(iii). Pub. L. 98-21, § 324(a)(3)(C), struck out cl. (iii) which related to the case of retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer.

Subsec. (a)(19). Pub. L. 98-21, § 327(a)(1), added par. (19).

Subsec. (b). Pub. L. 98-21, § 323(a)(1), substituted “a citizen or resident of the United States” for “a citizen of the United States” in text preceding par. (1).

Pub. L. 98-21, § 322(a)(2), added cl. (C) in text preceding par. (1).

Subsec. (b)(5). Pub. L. 98-21, § 101(b)(1), amended par. (5) generally. Prior to amendment par. (5) read as follows: “Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;”.

Subsec. (b)(6). Pub. L. 98-21, § 101(b)(1), amended par. (6) generally. Prior to amendment par. (6) read as follows:

“(A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

“(B) service performed, by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

“(i) service performed in the employ of a corporation which is wholly owned by the United States;

“(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

“(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

“(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

“(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

“(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

“(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

“(ii) in the legislative branch;

“(iii) in a penal institution of the United States by an inmate thereof;

“(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

“(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

“(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);”.

Subsec. (b)(8). Pub. L. 98-21, § 102(b)(1), struck out the subpar. (A) designation preceding “service performed”, struck out subpar. (B) which related to service performed by employees of nonprofit organizations, and in par. (8), as so designated substituted “except that this paragraph shall not apply” for “except that this subparagraph shall not apply”.

Subsec. (i)(5). Pub. L. 98-21, § 101(c)(2), added par. (5).

Subsec. (k). Pub. L. 98-21, § 102(b)(2), struck out subsec. (k) which related to exemption of religious, charitable and certain other organizations.

Subsec. (l). Pub. L. 98-21, § 321(a)(1), substituted “Agreements entered into by American employers with respect to foreign affiliates” for “Agreements entered into by domestic corporations with respect to foreign subsidiaries” in heading.

Subsec. (l)(1). Pub. L. 98-21, § 321(a)(1), substituted “affiliates” for “subsidiaries” in par. (1) heading, and in first sentence of provisions preceding subpar. (A), substituted “at the American employer’s request” for “at the request of any domestic corporation”, “any American employer (as defined in subsection (h)) who” for “any such corporation which”, “such manner and form” for “such form and manner”, and “affiliates” for “subsidiaries” after “such employer’s foreign”, and inserted “or residents” after “citizens”.

Pub. L. 98-21, § 321(e)(1), substituted “American employer” for “domestic corporation”, “affiliate” for “subsidiary” and “citizens or residents” for “citizens” wherever appearing in second and third sentences of provisions preceding subpar. (A) and substituted “American employer” for “domestic corporation” in subpars. (A) and (B).

Subsec. (l)(2) to (5). Pub. L. 98-21, § 321(e)(1), substituted, wherever appearing, “American employer” for “domestic corporation”, “American employers” for “domestic corporations”, “affiliate” for “subsidiary”, “affiliates” for “subsidiaries”, “foreign entity” for “foreign corporation”, “foreign entities” for “foreign corporations”, and “citizens or residents” for “citizens”.

Subsec. (l)(8). Pub. L. 98-21, § 321(a)(2), amended par. (8) generally, substituting provision defining a foreign affiliate for provision defining a foreign subsidiary of a domestic corporation which, for the purposes of this subsection and section 210(a) of the Social Security Act, had been defined as a foreign corporation not less than 20 percent of the voting stock of which was owned by such domestic corporation, or a foreign corporation more than 50 percent of the voting stock of which was owned by the foreign corporation described above.

Subsec. (l)(9), (10). Pub. L. 98-21, § 321(e)(1), substituted, wherever appearing, “American employer” for “domestic corporation”, “American employers” for “domestic corporations”, and “foreign entities” for “foreign corporations”.

Subsec. (r)(3)(A). Pub. L. 98-21, § 102(b)(3)(A), substituted “subsection (b)(8)” and “section 210(a)(8)” for “subsection (b)(8)(A)” and “section 210(a)(8)(A)”, respectively, in provisions preceding cl. (i).

Subsec. (r)(4). Pub. L. 98-21, § 102(b)(3)(B), struck out par. (4) which related to coordination with coverage of lay employees.

Subsec. (u)(1). Pub. L. 98-21, § 101(b)(2), substituted “sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof” for “sections 3101(b) and 3111(b)—

“(A) paragraph (6) of subsection (b) shall be applied without regard to subparagraphs (A), (B), and (C)(i), (ii), and (vi) thereof, and

“(B) paragraph (5) of subsection (b) (and the provisions of law referred to therein) shall not apply”.

Subsec. (v). Pub. L. 98-21, § 324(a)(1), added subsec. (v). 1982—Subsec. (u). Pub. L. 97-248 added subsec. (u).

1981—Subsec. (a). Pub. L. 97-123 inserted “(but, in the case of payments made to an employee or any of his dependents this subparagraph shall exclude from the term ‘wages’ only payments which are received under a workmen’s compensation law)” after “sickness or accident disability” in par. (2)(B), and inserted, after par. (18), the following provision: “Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (B) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.”

Subsec. (a)(18). Pub. L. 97-34 substituted “section 127 or 129” for “section 127”.

1980—Subsec. (a)(5)(D). Pub. L. 96-222 added subpar. (D).

Subsec. (a)(6). Pub. L. 96-499 struck out “(or the corresponding section of prior law)” after “section 3101” in subpar. (A) and inserted “with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor” after subpar. (B).

1978—Subsec. (a)(17). Pub. L. 95-472 added par. (17).

Subsec. (a)(18). Pub. L. 95-600 added par. (18).

1977—Subsec. (a)(7)(C), (10). Pub. L. 95-216, § 356(a), substituted “year” for “quarter” and “\$100” for “\$50”, wherever appearing.

Subsec. (a)(16). Pub. L. 95-216, § 356(b), added par. (16).

Subsec. (b)(10). Pub. L. 95-216, § 356(c), struck out subpar. (A) which related to service performed in any calendar quarter in the employ of any organization ex-

empt 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 was less than \$50, struck out the designation “(B)” preceding the remainder of par. (10), and redesignated former cls. (i) and (ii) of former subpar. (B) as subpars. (A) and (B).

Subsecs. (b)(17)(A), (g)(4)(B). Pub. L. 95-216, § 356(d), substituted “year” for “quarter”.

Subsec. (k)(4)(A). Pub. L. 95-216, § 312(b)(2), (f), substituted “(or, if later, as of the earliest date on which it satisfies clause (ii) of this subparagraph)” for “or any subsequent date” in cl. (i) and, in provisions following cl. (ii), inserted “(subject to subparagraph (C))” after “effective”.

Subsec. (k)(4)(B)(ii). Pub. L. 95-216, § 312(b)(4), substituted “first day of the calendar quarter” for “date”.

Subsec. (k)(4)(B)(iii). Pub. L. 95-216, § 312(g), added cl. (iii).

Subsec. (k)(4)(C). Pub. L. 95-216, § 312(b)(1), added subpar. (C).

Subsec. (k)(5). Pub. L. 95-216, § 312(a)(1), substituted “prior to April 1, 1978,” for “prior to the expiration of 180 days after the date of the enactment of this paragraph,” in subpar. (B), and, in provisions following subpar. (B), substituted “April 1, 1978” for “the 181st day after the date of enactment of this paragraph” and substituted “April 1, 1978,” for “such 181st day”.

Subsec. (k)(6). Pub. L. 95-216, § 312(b)(3), inserted “(except as provided in paragraph (4)(C))” after “services involved” in introductory provisions.

Subsec. (k)(7). Pub. L. 95-216, § 312(a)(2), substituted “prior to April 1, 1978,” for “prior to the expiration of 180 days after the date of the enactment of this paragraph”, “April 1, 1978,” for “the 181st day after such date,” and “prior to that date” for “prior to the first day of the calendar quarter in which such 181st day occurs”.

Subsec. (k)(8). Pub. L. 95-216, § 312(a)(3), (d), amended par. (8) first by substituting “prior to April 1, 1978,” for “by the end of the 180-day period following the date of the enactment of this paragraph”, “prior to April 1, 1978” for “within that period”, and “on that date” for “on the 181st day following that date”, and then further amending par. (8) as so amended by dividing the existing provisions into introductory provisions, subpar. (B), and closing provisions, inserting subpars. (A) and (C), substituting “by March 31, 1978” for “prior to April 1, 1978”, “by that date” for “prior to April 1, 1978”, and “on April 1, 1978” for “on that date” in subpar. (B) as so redesignated, and, in closing provisions, inserting “, or with respect to service constituting employment by reason of such request,” after “in which the date of such filing or constructive filing occurs”.

Subsec. (s). Pub. L. 95-216, § 314(a), added subsec. (s).

Subsec. (t). Pub. L. 95-216, § 315(a), added subsec. (t).

1976—Subsec. (b). Pub. L. 94-455, § 1903(a)(3)(A), substituted “, of whatever nature, performed” for “performed after 1936 and prior to 1955 which was employment for purposes of subchapter A 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” in introductory text.

Subsec. (b)(1). Pub. L. 94-455, § 1903(a)(3)(B), struck out “65 Stat. 119;” before “7 U.S.C. 1461-1468”.

Subsec. (b)(6)(B)(v). Pub. L. 94-455, § 1903(a)(3)(C), substituted “Secretary of Transportation” for “Secretary of the Treasury”.

Subsec. (b)(8)(B). Pub. L. 94-563, § 1(b), inserted “or deemed to have been so filed under paragraph (4) or (5) of such subsection” after “filed pursuant to subsection (k) (or the corresponding subsection of prior law)” in provisions preceding cl. (i), inserted “(or deemed to have been filed)” after “filed” in cls. (i), (ii), and (iii), and substituted “is (or is deemed to be) in effect” for “is in effect” in provisions following cl. (iii).

Subsec. (b)(12)(B). Pub. L. 94-455, § 1906(b)(13)(C), substituted “to the Secretary of the Treasury” for “to the Secretary”.

Subsec. (b)(20). Pub. L. 94-455, § 1207(e)(1)(A), added par. (20).

Subsec. (g)(3). Pub. L. 94-455, §1903(a)(3)(D), struck out “46 Stat. 1550, §3;” before “12 U.S.C. 1141j”.

Subsec. (k)(1). Pub. L. 94-455, §1903(a)(3)(E), redesignated subpar. (G) as (F). Former subpars. (F) and (H), which related to the right of an organization to request before 1960 to have a certificate effective where such certificate was filed after 1955 but prior to the enactment of this subparagraph and the right of an organization to amend a certificate filed before 1966 to make such certificate effective for an earlier date than had been originally established, respectively, were struck out.

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

Subsec. (k)(4) to (8). Pub. L. 94-563, §1(c), added pars. (4) to (8).

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

Subsec. (l)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (l)(2). Pub. L. 94-455, §1903(a)(3)(F), struck out “, but in no case prior to January 1, 1955” after “specified in the agreement”.

Subsec. (l)(4) to (7), (10). Pub. L. 94-455, §1906(b)(13)(a), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (m)(1). Pub. L. 94-455, §1903(a)(3)(G), struck out “after December 1956” after “include service performed”.

1973—Subsec. (a)(1). Pub. L. 93-233, §5(b)(2), effective with respect to remuneration paid after 1973, substituted “\$13,200” for “\$12,600” in two places.

Pub. L. 93-233, §5(d), applicable only with respect to remuneration paid after 1973 (as provided in section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42), amended section 203(b)(2)(C) of the Pub. L. 92-336 (set out as 1973 Amendment note hereunder) substituting “\$13,200” for “\$12,600”.

Pub. L. 93-66, §203(b)(2), effective with respect to remuneration paid after 1973, substituted “\$12,600” for “\$12,000” in two places.

Pub. L. 93-66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42), amended section 203(b)(2)(C) of Pub. L. 92-336 (set out as 1972 Amendment note hereunder) substituting “\$12,600” for “\$12,000”.

1972—Subsec. (a)(1). Pub. L. 92-336, §203(b)(2)(A), substituted “\$10,800” for “\$9,000” in two places.

Pub. L. 92-336, §203(b)(2)(B), effective with respect to remuneration paid after 1973, substituted “\$12,000” for “\$10,800” in two places.

Pub. L. 92-336, §203(b)(2)(C), effective with respect to remuneration paid after 1974, substituted “the contribution and benefit base (as determined under section 230 of the Social Security Act)” for “\$12,000” in two places, and “the calendar year with respect to which such contribution and benefit base is effective” for “any calendar year”.

Subsec. (a)(9). Pub. L. 92-603, §104(i), substituted uniform provision of 62 years of age, for separate provisions for men and women of 65 and 62 years, respectively.

Subsec. (a)(14). Pub. L. 92-603, §122(b), added par. (14).

Subsec. (a)(15). Pub. L. 92-603, §138(b), added par. (15).

Subsec. (b)(7)(D). Pub. L. 92-603, §128(b), added subpar. (D).

Subsec. (b)(8)(A). Pub. L. 92-603, §123(a)(2), inserted provision that this subparagraph shall not apply to service performed by a member of such religious order in the exercise of such duties if an election of coverage under subsec. (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs.

Subsec. (b)(10)(B). Pub. L. 92-603, §129(a)(2), inserted provisions relating to service performed in the employ of organizations described in section 509(a)(3) of this title.

Subsec. (i)(4). Pub. L. 92-603, §123(c)(2), added par. (4).  
Subsec. (r). Pub. L. 92-603, §123(b), added subsec. (r).  
1971—Subsec. (a)(1). Pub. L. 92-5 substituted “\$9,000” for “\$7,800” in two places.

1969—Subsec. (k)(1)(F)(i), (G)(i), (H)(i). Pub. L. 91-172, §943(c)(1)–(3), inserted “or pay tax” after “tax return”.

1968—Subsec. (a)(1). Pub. L. 90-248, §108(b)(2), substituted “\$7,800” for “\$6,600” wherever appearing.

Subsec. (a)(13). Pub. L. 90-248, §504(a), added par. (13).

Subsec. (b)(3)(B). Pub. L. 90-248, §123(b), provided for inclusion of family employment in a private home in definition of “employment,” upon compliance with conditions described in cls. (i) to (iii).

Subsec. (b)(6)(C)(iv). Pub. L. 90-248, §403(i)(1), substituted “section 5351(2) of title 5, United States Code” for “section 2 of the Act of August 4, 1967” and struck out “; 5 U.S.C., sec. 1052” at end of parenthetical text.

Subsec. (b)(6)(C)(vi). Pub. L. 90-248, §403(i)(2), substituted “subchapter III of chapter 83 of title 5, United States Code,” for “the Civil Service Retirement Act”.

Subsec. (b)(7)(C)(ii). Pub. L. 90-248, §403(i)(3), substituted “section 5351(2) of title 5, United States Code” for “section 2 of the Act of August 4, 1947” and struck out “; 5 U.S.C. 1052” at end of parenthetical text.

1965—Subsec. (a)(1). Pub. L. 89-97, §320(b)(2), substituted “\$6,600” for “\$4,800” wherever appearing.

Subsec. (a)(12). Pub. L. 89-97, §313(c)(3), added par. (12).

Subsec. (b)(6)(C)(iv). Pub. L. 89-97, §311(b)(4), inserted “, other than as a medical or dental intern or a medical or dental resident in training”.

Subsec. (b)(7)(C). Pub. L. 89-97, §317(b)(3), added subpar. (C).

Subsec. (b)(13). Pub. L. 89-97, §311(b)(5), struck out from the definition of employment the exclusion of 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.

Subsec. (k)(1)(B)(iii). Pub. L. 89-97, §316(a)(1), substituted “such date may not be earlier than the first day of the twentieth” for “, in the case of a certificate filed prior to January 1, 1960, such date may not be earlier than January 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth”.

Subsec. (k)(1)(H). Pub. L. 89-97, §316(b), added subpar. (H).

Subsec. (q). Pub. L. 89-97, §313(c)(4), added subsec. (q).  
1964—Subsec. (a)(11). Pub. L. 88-650 added par. (11).

Pub. L. 88-272 substituted “is a plan described in section 403(a), or” for “meets the requirements of section 401(a)(3), (4), (5), and (6)” in subpar. (5)(B), and added subpar. (5)(C).

1961—Subsec. (b)(19). Pub. L. 87-256 added par. (19).

Subsec. (i)(3). Pub. L. 87-293, §202(a)(1), added par. (3).

Subsec. (p). Pub. L. 87-293, §202(a)(2), added subsec. (p).

1960—Subsec. (b)(3). Pub. L. 86-778, §104(b), designated existing provisions as cl. (A) and struck out provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (b)(7). Pub. L. 86-778, §103(n), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby.

Subsec. (b)(18). Pub. L. 86-778, §103(o), added par. (18).

Subsec. (e). Pub. L. 86-778, §103(p), struck out a reference to Hawaii in cl. (1), and included Guam and American Samoa and cls. (1) and (2).

Pub. L. 86-624 struck out “Hawaii,” before “the District of Columbia,” in cl. (1).

Subsec. (k)(1)(A). Pub. L. 86-778, §105(a)(1), (2), struck out “and that at least two-thirds of its employees concur in the filing of the certificate” after “extended to service performed by its employees”, and substituted “of each employee (if any) who concurs” for “of each employee who concurs”.

Subsec. (k)(1)(E). Pub. L. 86-778, §105(a)(3), substituted “in either group, or may file a separate certifi-

cate pursuant to such subparagraph with respect to the employees in each group" for "in one of the groups if at least two-thirds of the employees in such group concur in the filing of the certificate. The organization may also file such a certificate with respect to the employees in the other group if at least two-thirds of the employees in such other group concur in the filing of such certificate."

1959—Subsec. (b)(6)(B)(ii). Pub. L. 86-168 substituted "Federal land bank association" for "national farm loan association", and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsec. (e). Pub. L. 86-70 struck out "Alaska," before "Hawaii".

1958—Subsec. (a)(1). Pub. L. 85-840, §402(b), substituted "\$4,800" for "\$4,200" wherever appearing.

Subsec. (b)(1). Pub. L. 85-840, §404(a), struck out provisions which excluded from definition of "employment" service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j of title 12.

Subsec. (b)(8)(B). Pub. L. 85-840, §405(b), made subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 321(k)(1)(E) of this title, became a member of such group, and made subparagraph applicable with respect to service performed by an employee as a member of a group described in section 321(k)(1)(E) of this title with respect to which no certificate is in effect.

Subsec. (k)(1). Pub. L. 85-840, §405(a), permitted amendment of the list at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed, allowed an organization to provide that the certificate shall be in effect for the period beginning with the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed prior to Jan. 1, 1960, such date may not be earlier than Jan. 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which such certificate is first made the certificate effective in the case of services performed by an employee whose name appears on a supplemental list only with respect to service performed by the employee for the period beginning with the first day of the calendar quarter in which the supplemental list is filed, required organizations described in subpar. (A) which employ both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or political subdivision thereof and individuals who are not in such positions, to divide their employees into two separate groups, authorized the filing of requests by organizations which filed certificates after 1955 but prior to Aug. 28, 1958, to have such certificates effective, with respect to services of certain individuals, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which they are effective and following the last calendar quarter of 1955, and provided for the due date and payment of tax for certain calendar quarters and for the expiration of the statutory period of assessment.

Subsec. (l)(3). Pub. L. 85-866 substituted "by" for "be" in heading.

1956—Subsec. (a)(8)(B). Act Aug. 1, 1956, ch. 836, §201(h)(1), 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.

Subsec. (a)(9). Act Aug. 1, 1956, ch. 836, §201(b), excluded payments made to a woman after she attains the age of 62.

Subsec. (b)(1)(B). Act Aug. 1, 1956, ch. 836, §201(c), excepted from term "employment" services performed by

foreign agricultural workers lawfully admitted from any foreign country or possession thereof, on a temporary basis to perform agricultural labor.

Subsec. (b)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §201(d)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (b)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §201(d)(2), substituted "Civil Service Retirement Act" for "Civil Service Retirement Act of 1930", and inserted "(other than the retirement system of the Tennessee Valley Authority)" after "retirement system".

Subsec. (b)(16), (17). Act Aug. 1, 1956, ch. 836, §§201(e)(1), 121d, added pars. (16) and (17).

Subsec. (i). Act Aug. 1, 1956, ch. 837, §410, designated existing provisions as par. (1) and added par. (2).

Subsec. (k)(1). Act Aug. 1, 1956, ch. 836, §201(k), (l), inserted "or at any time prior to January 1, 1959, whichever is the later" after "the certificate is in effect", and substituted "the first day of the calendar quarter in which such certificate is filed or the first day of the succeeding calendar quarter, as may be specified in the certificate," for "the first day following the close of the calendar quarter in which such certificate is filed,".

Subsec. (l)(6). Act Aug. 1, 1956, ch. 836, §103(j), inserted reference to the Federal Disability Insurance Trust Fund.

Subsec. (l)(8)(A). Act Aug. 1, 1956, ch. 836, §201(j), substituted "not less than 20 percent" for "more than 50 percent".

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, §411(a), added subsecs. (m) and (n).

Subsec. (o). Act Aug. 1, 1956, ch. 836, §201(h)(2), added subsec. (o).

1954—Subsec. (a)(1). Act Sept. 1, 1954, §204(a), substituted "\$4,200" for "\$3,600" wherever appearing.

Subsec. (a)(7)(B). Act Sept. 1, 1954, §204(b)(1), made coverage of domestic service dependent solely on receipt of \$50 in cash wages in a calendar quarter by an employee from an employer for such service.

Subsec. (a)(7)(C). Act Sept. 1, 1954, §204(b)(2), added subpar. (C).

Subsec. (a)(8). Act Sept. 1, 1954, §204(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1). Act Sept. 1, 1954, §205(a), made coverage of agricultural labor depend solely on the payment of cash remuneration of \$100 or more per year, thereby eliminating the need for an agricultural laborer to have served a qualifying calendar quarter and to have worked on a full time basis for 60 days during a succeeding calendar quarter and to have received \$50 or more for his labor during such succeeding calendar quarter, removed the specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (b)(3). Act Sept. 1, 1954, §205(b), struck out par. (3) and redesignated pars. (4) to (14) as (3) to (13), respectively.

Subsec. (b)(4). Act Sept. 1, 1954, §205(c), amended par. (4), as redesignated, to make the exception with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer.

Subsec. (b)(6)(B). Act Sept. 1, 1954, §205(d)(1)(A), amended par. (6), as redesignated, by inserting in subpar. (B) "by an individual" after "service is performed" and "and if such service is covered by a retirement system established by such instrumentality" after "December 31, 1950".

Subsec. (b)(6)(B)(v). Act Sept. 1, 1954, §205(d)(1)(B), amended par. (6), as redesignated, by adding cl. (v) to subpar. (B).

Subsec. (b)(6)(C). Act Sept. 1, 1954, §205(d)(2), struck out exception from coverage for services in the following categories: temporary employees in the Post Office Department field service; temporary census taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees re-

ceiving compensation of \$12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Commodity Stabilization Service and similar bodies, unless such bodies are composed exclusively of full-time Federal employees, and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (b)(14) to (17). Act Sept. 1, 1954, §205(e), struck out par. (15) and redesignated pars. (16) and (17) as (14) and (15), respectively.

Subsec. (c). Act Sept. 1, 1954, §205(b), substituted “subsection (b)(9)” for “subsection (b)(10)”.

Subsec. (d)(3)(C). Act Sept. 1, 1954, §206(a), struck out requirement that performance of services of homeworkers be subject to State licensing requirements.

Subsec. (k)(1). Act Sept. 1, 1954, §§205(b), 207, substituted “(b)(8)(B)” for “(b)(9)(B)” and provided that the list accompanying any certificate filed by a non-profit organization with respect to its lay employees may be amended only within a period of two years after the certificate takes effect and provided that a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect shall be in effect only as to those services performed by an individual on the list which are performed by him after the calendar quarter in which the supplemental list is filed.

Subsec. (l). Act Sept. 1, 1954, §209, added subsec. (l).

#### CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” in subsec. (b)(5)(E) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

Pub. L. 110-245, title I, §115(d), June 17, 2008, 122 Stat. 1637, provided that: “The amendments made by this section [amending this section, sections 3306 and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in section 5 of the Mortgage Forgiveness Debt Relief Act of 2007 [Pub. L. 110-142].”

Pub. L. 110-245, title III, §302(c), June 17, 2008, 122 Stat. 1648, provided that: “The amendment made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed in calendar months beginning more than 30 days after the date of the enactment of this Act [June 17, 2008].”

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provision of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 8(b) of Pub. L. 110-172, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108-375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108-375, set out as a note under section 134 of this title.

Amendment by section 251(a)(1)(A) of Pub. L. 108-357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108-357, set out as a note under section 421 of this title.

Amendment by section 320(b)(1) of Pub. L. 108-357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108-357, set out as a note under section 108 of this title.

Amendment by section 802(c)(1) of Pub. L. 108-357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108-357, set out as an Effective Date note under section 4985 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. A, §101(h) [title VIII, §805], Oct. 21, 1998, 112 Stat. 2681-480, 2681-538, provided that: “Except as otherwise specifically provided, this title [amending this section and section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under this section] and the amendments made by this title shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [title XI of Pub. L. 105-33, see Effective Date of 1997 Amendment note below].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title XI, §11246(b)(4), formerly §11246(b)(3), Aug. 5, 1997, 111 Stat. 756, renumbered §11246(b)(4), by Pub. L. 105-277, div. A, §101(h) [title VIII, §802(a)(1)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-532, provided that: “The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11-1726, District of Columbia Code (as amended by paragraph (1)).”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1116(a)(3), Aug. 20, 1996, 110 Stat. 1762, provided that:

“(A) IN GENERAL.—The amendments made by this subsection [amending this section, section 6050A of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid—

“(i) after December 31, 1994, and

“(ii) after December 31, 1984, and before January 1, 1995, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

“(B) REPORTING REQUIREMENT.—The amendment made by paragraph (1)(C) [amending section 6050A of this title] shall apply to remuneration paid after December 31, 1996.”

Amendment by section 1421(b)(8)(A) 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 this title.

Pub. L. 104-188, title I, §1458(c)(2), Aug. 20, 1996, 110 Stat. 1820, provided that: “The amendments made by subsection (b) [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1996.”

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 2(a)(1)(A), (B) of Pub. L. 103-387 applicable to remuneration paid after Dec. 31, 1993, and amendment by section 2(a)(1)(C) of Pub. L. 103-387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3) of Pub. L. 103-387, set out as a note under section 3102 of this title.

Amendment by section 108(h)(2) 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 Title 42, The Public Health and Welfare.

Amendment by section 303(a)(2), (b)(2) of Pub. L. 103-296 applicable with respect to service performed on

or after Jan. 1, 1995, see section 303(e) of Pub. L. 103-296, set out as a note under section 410 of Title 42.

Amendment by section 319(a)(1), (5) of Pub. L. 103-296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103-296, set out as a note under section 1402 of this title.

Amendment by section 320(a)(1)(C) of Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103-66, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(a) of Pub. L. 101-508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101-508, set out as a note under section 1402 of this title.

Pub. L. 101-508, title XI, §11332(d), Nov. 5, 1990, 104 Stat. 1388-470, provided that: "The amendments made by this section [amending this section and sections 410 and 418 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after July 1, 1991."

#### EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101-239 applicable with respect to any agreement in effect under section 3121(f) of this title on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101-239, set out as a note under section 406 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 this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1011B(a)(22)(F), Nov. 10, 1988, 102 Stat. 3486, provided that: "The amendments made by this paragraph [amending this section, sections 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall not apply to any individual who separated from service with the employer before January 1, 1989."

Pub. L. 100-647, title I, §1018(r)(2)(B), Nov. 10, 1988, 102 Stat. 3586, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to services performed after March 31, 1986."

Amendment by sections 1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(23)(A), and 1018(u)(35) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 3043(c)(2) 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 nonexistence 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 this title.

Pub. L. 100-647, title VIII, §8015(b)(3), Nov. 10, 1988, 102 Stat. 3792, provided that: "The amendments made by

this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply as if such amendments had been included or reflected in section 304 of the Federal Employees' Retirement System Act of 1986 (100 Stat. 606) [Pub. L. 99-335] at the time of its enactment [June 6, 1986]."

Pub. L. 100-647, title VIII, §8015(c)(3), Nov. 10, 1988, 102 Stat. 3792, provided that: "The amendments made by this subsection [amending this section and section 410 of Title 42] shall apply to any individual only upon the performance by such individual of service described in subparagraph (C), (D), (E), (F), (G), or (H) of section 210(a)(5) of the Social Security Act (42 U.S.C. 410(a)(5)) on or after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 8016(a)(3)(A), (4)(A), (C) of Pub. L. 100-647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100-647, set out as a note under section 3111 of this title.

Pub. L. 100-647, title VIII, §8017(c), Nov. 10, 1988, 102 Stat. 3794, provided that: "The amendments made by this section [amending this section and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203]."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9001(d), Dec. 22, 1987, 101 Stat. 1330-286, provided that: "The amendments made by this section [amending this section and sections 409, 410, and 429 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1987."

Pub. L. 100-203, title IX, §9002(c), Dec. 22, 1987, 101 Stat. 1330-287, provided that: "The amendments made by this section [amending this section and section 409 of Title 42] shall apply with respect to remuneration for agricultural labor paid after December 31, 1987."

Pub. L. 100-203, title IX, §9003(b), Dec. 22, 1987, 101 Stat. 1330-287, as amended by Pub. L. 100-647, title VIII, §8013(a), Nov. 10, 1988, 102 Stat. 3789, provided that: "The amendments made by subsection (a) [amending this section and section 409 of Title 42] shall apply with respect to group-term life insurance coverage in effect after December 31, 1987, except that such amendments shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1988, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation."

[Pub. L. 100-647, title VIII, §8013(b), Nov. 10, 1988, 102 Stat. 3790, provided that: "The amendment made by subsection (a) [amending section 9003(b) of Pub. L. 100-203, set out above] shall apply as if such amendment had been included or reflected in section 9003(b) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203] at the time of its enactment."]

Pub. L. 100-203, title IX, §9004(c), Dec. 22, 1987, 101 Stat. 1330-288, provided that: "The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to remuneration paid after December 31, 1987."

Pub. L. 100-203, title IX, §9005(c), Dec. 22, 1987, 101 Stat. 1330-288, provided that: "The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to remuneration paid after December 31, 1987."

Amendment by section 9006(a), (b)(2) of Pub. L. 100-203 applicable with respect to tips received and

wages paid on or after Jan. 1, 1988, see section 9006(c) of Pub. L. 100-203, set out as a note under section 3111 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(1) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(7) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99-514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(A) 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 this title.

Amendment by section 1882(c) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Pub. L. 99-514, title XVIII, §1895(b)(18)(C), Oct. 22, 1986, 100 Stat. 2935, provided that: "The amendments made by this paragraph [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after March 31, 1986."

Amendment by Pub. L. 99-509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, see section 9002(d) of Pub. L. 99-509, set out as a note under section 418 of Title 42.

Amendment by section 12112(b) of Pub. L. 99-272 effective with respect to service performed after Dec. 31, 1983, see section 12112(c) of Pub. L. 99-272, set out as a note under section 409 of Title 42.

Pub. L. 99-272, title XIII, §13205(d)(1), Apr. 7, 1986, 100 Stat. 318, provided that: "The amendments made by subsection (a) [amending this section and sections 1402, 3122, 3125, 6205, and 6413 of this title] shall apply to services performed after March 31, 1986."

#### EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-221 applicable to any return to performance of service in employ of United States, or of an instrumentality thereof, after 1983, see section 3(c) of Pub. L. 99-221, set out as a note under section 410 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(c) of Pub. L. 98-369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98-369, set out as an Effective Date note under section 280G of this title.

Amendment by section 491(d)(36) 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 this title.

Amendment by section 531(d)(1)(A) 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 this title.

Amendment by section 2601(b) of Pub. L. 98-369 effective with respect to service performed after Dec. 31, 1983, with enumerated exceptions, see section 2601(f) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2603(a)(2), (b) of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of Title 42.

Pub. L. 98-369, div. B, title VI, §2661(o)(3), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective Jan. 1, 1984.

Amendment by section 2663 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 Title 42.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-21, title I, §101(d), Apr. 20, 1983, 97 Stat. 70, as amended by Pub. L. 98-369, div. B, title VI, §2662(a), July 18, 1984, 98 Stat. 1159, provided that: "The amendments made by this section [amending this section and sections 409 and 410 of Title 42, The Public Health and Welfare] shall be effective with respect to service performed after December 31, 1983."

Pub. L. 98-21, title I, §102(c), Apr. 20, 1983, 97 Stat. 71, provided that: "The amendments made by the preceding provisions of this section [amending this section and section 410 of Title 42] shall be effective with respect to service performed after December 31, 1983 (but the provisions of sections 2 and 3 of Public Law 94-563 [set out below] and section 312(c) of Public Law 95-216 [set out below] shall continue in effect, to the extent applicable, as though such amendments had not been made)."

Amendment by section 321 of Pub. L. 98-21, applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21 set out as a note under section 406 of this title.

Pub. L. 98-21, title III, §322(c), Apr. 20, 1983, 97 Stat. 121, provided that: "The amendments made by this section [amending this section, section 1402 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall be effective for taxable years beginning on or after the date of the enactment of this Act [Apr. 20, 1983]."

Pub. L. 98-21, title III, §323(c)(1), Apr. 20, 1983, 97 Stat. 121, provided that: "The amendments made by subsection (a) [amending this section and section 410 of Title 42] shall apply to remuneration paid after December 31, 1983."

Pub. L. 98-21, title III, §324(d), Apr. 20, 1983, 97 Stat. 125, as amended by Pub. L. 98-369, div. B, title VI, §2662(f)(2), July 18, 1984, 98 Stat. 1159; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in this subsection, the amendments made by this section [amending this section, section 3306 of this title, and sections 403 and 409 of Title 42 and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1983. For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) [amending section 3306 of this title and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1984. For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(3) The amendments made by this section shall not apply to employer contributions made during 1984 and attributable to services performed during 1983 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986 [for-



merly I.R.C. 1954]) if, under the terms of such arrangement as in effect on March 24, 1983—

“(A) the employee makes an election with respect to such contribution before January 1, 1984, and

“(B) the employer identifies the amount of such contribution before January 1, 1984.

In the case of the amendments made by subsection (b), the preceding sentence shall be applied by substituting ‘1985’ for ‘1984’ each place it appears and by substituting ‘during 1984’ for ‘during 1983’.

“(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revenue Code of 1986, as added by this section) and an individual—

“(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

“(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies. For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or (13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act [Apr. 20, 1983]) shall be treated as a nonqualified deferred compensation plan.”

Pub. L. 98-21, title III, § 327(d), Apr. 20, 1983, 97 Stat. 127, as amended by Pub. L. 98-369, div. B, title VI, § 2662(g), July 18, 1984, 98 Stat. 1160; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendment made by subsection (a) [amending this section and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

“(2) The amendments made by subsection (b) and subsection (c)(4) [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

“(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984.”

Pub. L. 98-21, title III, § 328(d), Apr. 20, 1983, 97 Stat. 128, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

“(2) The amendments made by subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984.”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, § 278(c)(1), Sept. 3, 1982, 96 Stat. 562, provided that: “The amendments made by subsection (a) [amending this section and sections 1402 and 3122 of this title] shall apply to remuneration paid after December 31, 1982.”

#### EFFECTIVE DATE OF 1981 AMENDMENTS

Pub. L. 97-123, § 3(g), Dec. 29, 1981, 95 Stat. 1663, provided that:

“(1) Except as provided in paragraph (2), this section (and the amendments made by this section) [amending this section, section 3231 of this title, and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 3101 of this title] shall apply to remuneration paid after December 31, 1981.

“(2) This section (and the amendments made by this section) shall not apply with respect to any payment

made by a third party to an employee pursuant to a contractual relationship of an employer with such third party entered into before December 14, 1981, if—

“(A) coverage by such third party for the group in which such employee falls ceases before March 1, 1982, and

“(B) no payment by such third party is made to such employee under such relationship after February 28, 1982.”

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 this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96-499, title XI, § 1141(c), Dec. 5, 1980, 94 Stat. 2694, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1980.

“(2) EXCEPTION FOR STATE AND LOCAL GOVERNMENTS.—

“(A) The amendments made by this section (insofar as they affect the application of section 218 of the Social Security Act [42 U.S.C. 418]) shall not apply to any payment made before January 1, 1984, by any governmental unit for positions of a kind for which all or a substantial portion of the social security employee taxes were paid by such governmental unit (without deduction from the remuneration of the employee) under the practices of such governmental unit in effect on October 1, 1980.

“(B) For purposes of subparagraph (A), the term ‘social security employee taxes’ means the amount required to be paid under section 218 of the Social Security Act [42 U.S.C. 418] as the equivalent of the taxes imposed by section 3101 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(C) For purposes of subparagraph (A), the term ‘Governmental unit’ means a State or political subdivision thereof within the meaning of section 218 of the Social Security Act [42 U.S.C. 418].”

Pub. L. 96-222, title I, § 101(b)(1)(E), Apr. 1, 1980, 94 Stat. 205, provided that: “The amendments made by subparagraph (B) of subsection (a)(10) [amending this section and section 3306 of this title] shall apply to payments made on or after January 1, 1979.”

#### EFFECTIVE DATE OF 1978 AMENDMENTS

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 this title.

Pub. L. 95-472, § 3(d), Oct. 17, 1978, 92 Stat. 1333, provided that: “The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1976.”

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-216, title III, § 312(h), Dec. 20, 1977, 91 Stat. 1535, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsections (a), (b), (d), (e), (f), and (g) of this section [amending this section and provisions set out below] shall be effective as though they had been included as a part of the amendments made to section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by the first section of Public Law 94-563 (or, in the case of the amendments made by subsection (e), as a part of section 3 of such Public Law).”

Pub. L. 95-216, title III, § 314(c), Dec. 20, 1977, 91 Stat. 1536, provided that: “The amendments made by this section [amending this section and section 3306 of this title] shall apply with respect to wages paid after December 31, 1978.”

Amendment by section 315(a) of Pub. L. 95-216 applicable with respect to wages paid with respect to employment performed in months after Dec. 1977, see section 315(c) of Pub. L. 95-216, set out as a note under section 3111 of this title.

Pub. L. 95-216, title III, § 356(e), Dec. 20, 1977, 91 Stat. 1556, provided that: "The amendments made by this section [amending this section] shall apply with respect to remuneration paid and services rendered after December 31, 1977."

#### EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94-563, § 1(d), Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare], shall apply with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by such amendments)."

Pub. L. 94-455, title XII, § 1207(f)(4), Oct. 4, 1976, 90 Stat. 1708, as amended by Pub. L. 95-600, title VII, § 701(z)(1), Nov. 6, 1978, 92 Stat. 2921; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by paragraphs (1)(A) and (2)(A) of subsection (e) [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1954. The amendments made by paragraphs (1)(B), (1)(C), and (2)(B) of such subsection [amending sections 1401 and 3401 of this title and section 411 of Title 42] shall apply to taxable years ending after December 31, 1954. The amendments made by paragraph (3) of such subsection [enacting section 6050A and amending section 6652 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Oct. 4, 1976].

"(B) Notwithstanding subparagraph (A), if the owner or operator of any boat treated a share of the boat's catch of fish or other aquatic animal life (or a share of the proceeds therefrom) received by an individual after December 31, 1954, and before the date of the enactment of this act [Oct. 4, 1976] for services performed by such individual after December 31, 1954, on such boat as being subject to the tax under chapter 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], then the amendments made by paragraphs (1)(A) and (B) and (2) of subsection (c) shall not apply with respect to such services performed by such individual (and the share of the catch, or the proceeds therefrom, received by him for such services)."

[Pub. L. 95-600, title VII, § 701(z)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: "The amendments made by paragraph (1) [amending section 1207(f)(4) of Pub. L. 94-455, set out above] shall take effect on October 4, 1976."]

Amendment by section 1903 of Pub. L. 94-455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93-66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42.

#### EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(i) 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 Title 42, The Public Health and Welfare.

Amendment by sections 122(b) and 138(b) of Pub. L. 92-603 applicable in the case of any payment made after December 1972, see sections 122(c) and 138(c) of Pub. L. 92-603, set out as notes under section 409 of Title 42.

Amendment by section 128(b) of Pub. L. 92-603 applicable with respect to service performed on and after first day of calendar quarter which begins on or after Oct. 30, 1972, see section 128(c) of Pub. L. 92-603, set out as a note under section 410 of Title 42.

Amendment by section 129(a)(2) of Pub. L. 92-603 applicable to services performed after Dec. 31, 1972, see section 129(b) of Pub. L. 92-603, set out as a note under section 410 of Title 42.

Amendment by Pub. L. 92-336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92-336, set out as a note under section 409 of Title 42.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92-5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91-172, set out as a note under section 6651 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b) of Pub. L. 90-248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by section 123(b) of Pub. L. 90-248 applicable with respect to services performed after Dec. 31, 1967, see section 123(c) of Pub. L. 90-248, set out as a note under section 410 of Title 42.

Pub. L. 90-248, title V, § 504(d), Jan. 2, 1968, 81 Stat. 935, provided that: "The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply with respect to remuneration paid after the date of the enactment of this Act [Jan. 2, 1968]."

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(b)(4), (5) of Pub. L. 89-97 applicable only with respect to services performed after 1965, see section 311(c) of Pub. L. 89-97, set out as an Effective Date of 1965 Amendment note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 313 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 this title.

Pub. L. 89-97, title III, § 316(a)(2), July 30, 1965, 79 Stat. 386, provided that: "The amendment made by paragraph (1) [amending this section] shall apply in the case of any certificate filed under section 3121(k)(1)(A) of such Code after the date of the enactment of this Act [July 30, 1965]."

Amendment by section 317 of Pub. L. 89-97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89-97, set out as a note under section 410 of Title 42.

Pub. L. 89-97, title III, § 320(c), July 30, 1965, 79 Stat. 394, provided that: "The amendments made by subsections (a)(1) and (a)(3)(A) [amending sections 409 and 413 of Title 42], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending this section and sections 3122, 3125, and 6413 of this

title], shall apply only with respect to remuneration paid after December 1965. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending section 1402 of this title and sections 411 and 413 of Title 42] shall apply only with respect to taxable years ending after 1965. The amendment made by subsection (a)(4) [amending section 415 of Title 42] shall apply only with respect to calendar years after 1965."

#### EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88-650, §4(d), Oct. 13, 1964, 78 Stat. 1078, provided that: "The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after the date of the enactment of this Act [Oct. 13, 1964]."

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 this title.

#### EFFECTIVE DATE OF 1961 AMENDMENTS

Pub. L. 87-293, title II, §202(c), Sept. 22, 1961, 75 Stat. 627, provided that: "The amendments made by subsections (a) and (b) of this section [amending this section, sections 3122 and 6051 of this title, and sections 405, 409, and 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the date of the enactment of this Act [Sept. 22, 1961]. In the case of any individual who is enrolled as a volunteer or volunteer leader under section 16(a) of this Act [section 2515(a) of Title 22, Foreign Relations and Intercourse] such amendments shall apply with respect to services performed on or after the effective date of such enrollment." [Section 202(c) of Pub. L. 87-293 repealed by Pub. L. 89-572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22.]

Pub. L. 87-256, title I, §110(h)(3), Sept. 21, 1961, 75 Stat. 537, provided that: "The amendments made by subsections (e) and (f) of this section [amending this section, section 3306 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after December 31, 1961."

#### EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(n) of Pub. L. 86-778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42, The Public Health and Welfare, and such amendment applicable only as expressly provided therein, see section 103(v)(2) of Pub. L. 86-778, set out as a note under section 402 of Title 42.

Amendment by section 103(o), (p) of Pub. L. 86-778 applicable only with respect to service performed after

1960, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of Title 42.

Amendment by section 104(b) of Pub. L. 86-778 applicable only with respect to services performed after 1960, see section 104(c) of Pub. L. 86-778, set out as a note under section 410 of Title 42.

Pub. L. 86-624, §18(k), July 12, 1960, 74 Stat. 416, provided that: "The amendments contained in subsections (a) through (j) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7653, and 7701 of this title] shall be effective as of August 21, 1959."

Pub. L. 86-778, title I, §105(d), Sept. 13, 1960, 74 Stat. 945, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960].

"(2) No monthly benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of this section or the amendments made by such subsections [amending section 1402 of this title and enacting provisions set out as notes under this section and 1402 of this title], and no lump-sum death payment under such title shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960]."

#### EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86-168 effective Jan. 1, 1960, see Pub. L. 86-168, title II, §203(c), Aug. 18, 1959, 73 Stat. 390.

Pub. L. 86-70, §22(i), June 25, 1959, 73 Stat. 147, provided that: "The amendments contained in subsections (a) through (h) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7621, 7653, and 7701 of this title] shall be effective as of January 3, 1959."

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-840, title IV, §402(e), Aug. 28, 1958, 72 Stat. 1043, provided that: "The amendments made by subsections (b) and (c) [amending this section and section 3122 of this title] shall be applicable only with respect to remuneration paid after 1958."

Pub. L. 85-840, title IV, §404(b), Aug. 28, 1958, 72 Stat. 1044, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958."

Pub. L. 85-840, title IV, §405(c), Aug. 28, 1958, 72 Stat. 1047, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of enactment of this Act [Aug. 28, 1958] and requests filed under subparagraph (F) of such section after such date."

#### EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, title II, §201(m), 70 Stat. 843, as amended by act Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095, provided that:

"(1) The amendments made by subsection (a) [enacting section 3113 of this title] and paragraph (1) of subsection (h) [amending this section] shall apply with respect to remuneration paid after 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to remuneration paid after October 1956. The amendments made by subsection (c) and paragraph (2) of subsection (h) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall apply with re-

spect to service with respect to which the amendments made by paragraphs (1) and (2) of subsection (b) of section 104 of this Act [amending section 410 of Title 42, The Public Health and Welfare] apply. The amendments made by paragraph (1) of subsection (e) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (3) of such subsection shall [amending section 1402 of this title] apply with respect to taxable years ending after 1954. The amendments made by paragraph (2) of subsection (e) and by subsection (f) [amending section 1402 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (1) [amending section 1402 of this title] shall apply with respect to taxable years ending on or after December 31, 1956. The amendment made by subsection (1) [amending this section] shall apply with respect to certificates filed after 1956 under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(2)(A) Except as provided in subparagraph (B), the amendment made by subsection (g) [amending section 1402 of this title] shall apply only with respect to taxable years ending after 1956.

“(B) Any individual who, for a taxable year ending after 1954 and prior to 1957, had income which by reason of the amendment made by subsection (g) would have been included within the meaning of ‘net earnings from self-employment’ (as such term is defined in section 1402(a) of the Internal Revenue Code of 1986), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, may elect to have the amendment made by subsection (g) apply to his taxable years ending after 1954 and prior to 1957. No election made by any individual under this subparagraph shall be valid unless such individual has filed a waiver certificate under section 1402(e) of such Code prior to the making of such election or files a waiver certificate at the time he makes such election.

“(C) Any individual described in subparagraph (B) who has filed a waiver certificate under section 1402(e) of such Code prior to the date of enactment of this Act [Aug. 1, 1956], or who files a waiver certificate under such section on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, must make such election on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, or before April 16, 1957, whichever is the later.

“(D) Any individual described in subparagraph (B) who has not filed a waiver certificate under section 1402(e) of such Code on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957 must make such election on or before the due date of his return (including any extension thereof) for his first taxable year ending after 1956. Any individual described in this subparagraph whose period for filing a waiver certificate under section 1402(e) of such Code has expired at the time he makes such election may, notwithstanding the provisions of paragraph (2) of such section, file a waiver certificate at the time he makes such election.

“(E) An election under subparagraph (B) shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Notwithstanding the provisions of paragraph (3) of section 1402(e) of such Code, the waiver certificate filed by an individual who makes an election under subparagraph (B) (regardless of when filed) shall be effective for such individual's first taxable year ending after 1954 in which he had income which by reason of the amendment made by subsection (g) would have been included within the meaning of ‘net earnings from self-employment’ (as such term is defined in section 1402(a) of such Code), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, or for the taxable year prescribed by such paragraph (3) of section 1402(e), if such taxable year is earlier, and for all succeeding taxable years.

“(F) No interest or penalty shall be assessed or collected for failure to file a return within the time prescribed by law, if such failure arises solely by reason of an election made by an individual under subparagraph (B), or for any underpayment of the tax imposed by section 1401 of such Code arising solely by reason of such election, for the period ending with the date such individual makes an election under subparagraph (B).

“(3) Any tax under chapter 2 of the Internal Revenue Code of 1986 [section 1401 et seq. of this title] which is due, solely by reason of the enactment of subsection (f) [amending section 1402 of this title], or paragraph (2) of subsection (e), of this section [amending section 1402 of this title], for any taxable year ending on or before the date of the enactment of this Act [Aug. 1, 1956] shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which this Act is enacted. In no event shall interest be imposed on the amount of any tax due under such chapter solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section for any period before the day after the date of enactment of this Act.

“(4) Any tax due under chapter 21 of the Internal Revenue Code of 1986 [this chapter] which is due, solely by reason of the enactment of subsection (d) [amending this section] and an effective date prescribed pursuant to paragraph (2)(B) or (2)(C) of section 104(i) [set out as a note under section 410 of Title 42, The Public Health and Welfare], for any calendar quarter beginning prior to the day on which the Secretary of Health, Education, and Welfare approves the plan which prescribes such effective date shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which such plan is approved. In no event shall interest be imposed on the amount of any such tax due under such chapter for any period before the day on which the Secretary of Health, Education, and Welfare approves such plan.”

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.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1206, title II, § 204(c), 68 Stat. 1091, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to remuneration paid after 1954.”

Act Sept. 1, 1954, ch. 1206, title II, § 205(f), 68 Stat. 1092, provided that: “The amendments made by subsections (c), (d), and (e) [amending this section] shall be applicable only with respect to services performed after 1954. The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954.”

Act Sept. 1, 1954, ch. 1206, title II, § 206(b), 68 Stat. 1093, provided that: “The amendment made by subsection (a) [amending this section] shall be applicable only with respect to services performed after 1954.”

#### REGULATIONS

Pub. L. 97-123, § 3(d), Dec. 29, 1981, 95 Stat. 1662, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The regulations prescribed under the last sentence of section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the regulations prescribed under subparagraph (D) of section 3231(e)(4) of such Code, shall provide procedures under which, if (with respect to any employee) the third party promptly—

“(A) withholds the employee portion of the taxes involved,

“(B) deposits such portion under section 6302 of such Code, and

“(C) notifies the employer of the amount of the wages or compensation involved, the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of such Code (relating to receipts for employees) with respects to the wages or compensation involved.

“(2) For purposes of paragraph (1)—

“(A) the term ‘employer’ means the employer for whom services are normally rendered,

“(B) the term ‘taxes involved’ means, in the case of any employee, the taxes under chapters 21 and 22 which are payable solely by reason of the parenthetical matter contained in subparagraph (B) of section 3121(a)(2) of such Code, or solely by reason of paragraph (4) of section 3231(e) of such Code, and

“(C) the term ‘wages or compensation involved’ means, in the case of any employee, wages or compensation with respect to which taxes described in subparagraph (B) are imposed.”

#### REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(1), (2) of Pub. L. 87-293, 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 section 2515 of Title 22, Foreign Relations and Intercourse.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, of Surgeon General of Public Health Service, and of all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

#### SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was established by act Sept. 23, 1950, ch. 1024, §12, 64 Stat. 977 and ceased to operate June 30, 1973.

#### NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108-121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108-121 with respect to tax treatment of any amounts under

program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### LINE ITEM VETO

Section 642(d)(2) of Pub. L. 105-61, amending this section, was subject to line item veto by the President, Cancellation No. 97-56, signed Oct. 16, 1997, 62 F.R. 54338, Oct. 17, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

#### CLARIFICATION OF STANDARD TO BE USED IN DETERMINING EMPLOYMENT TAX STATUS OF SECURITIES BROKERS

Pub. L. 105-34, title IX, §921, Aug. 5, 1997, 111 Stat. 879, provided that:

“(a) IN GENERAL.—In determining for purposes of the Internal Revenue Code of 1986 whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d) of the Internal Revenue Code of 1986), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

“(b) EFFECTIVE DATE.—Subsection (a) shall apply to services performed after December 31, 1997.”

#### TREATMENT OF CERTAIN UNIVERSITY ACCOUNTS

Pub. L. 104-188, title I, §1802, Aug. 20, 1996, 110 Stat. 1892, provided that:

“(a) IN GENERAL.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 (relating to concurrent employment by 2 or more employers)—

“(1) the following entities shall be deemed to be related corporations that concurrently employ the same individual:

“(A) a State university which employs health professionals as faculty members at a medical school, and

“(B) an agency account of a State university which is described in subparagraph (A) and from which there is distributed to such faculty members payments forming a part of the compensation that the State, or such State university, as the case may be, agrees to pay to such faculty members, but only if—

“(i) such agency account is authorized by State law and receives the funds for such payments from a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

“(ii) such payments are distributed by such agency account to such faculty members who render patient care at such medical school, and

“(iii) such faculty members comprise at least 30 percent of the membership of such faculty practice plan, and

“(2) remuneration which is disbursed by such agency account to any such faculty member of the medical school described in paragraph (1)(A) shall be deemed to have been actually disbursed by the State, or such State university, as the case may be, as a common paymaster and not to have been actually disbursed by such agency account.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1996.”

#### 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 chapter, 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 Title 42, The Public Health and Welfare.

**NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990**

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 this title.

**TREATMENT OF CERTAIN FAMILY SERVICES CARE PROVIDERS**

Pub. L. 100-647, title VI, §6305, Nov. 10, 1988, 102 Stat. 3756, provided that:

“(a) IN GENERAL.—A State may treat a person who renders dependent care or similar services as other than an employee [for] employment tax purposes for the applicable period if all of the following conditions are satisfied with respect to such person for such applicable period:

“(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State.

“(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to chapter 7 of title 42 of the United States Code [42 U.S.C. 301 et seq.], or the provisions and amendments made by the Family Security Act of 1988 [probably means the Family Support Act of 1988, Pub. L. 100-485, see Tables for classification].

“(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes.

“(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section [Nov. 10, 1988].

“(v) No more than ten percent of the State's employees are provided with insurance under title II of the Social Security Act [42 U.S.C. 401 et seq.] pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such title [42 U.S.C. 418].

“(b) STATE.—For purposes of this section, the term ‘State’ shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

“(c) EMPLOYMENT TAX.—For purposes of this section, the term ‘employment tax’ means any tax imposed by subtitle C of the Internal Revenue Code of 1986.

“(d) APPLICABLE PERIOD.—For purposes of this section, the term ‘applicable period’ means the period beginning on January 1, 1984 and ending on December 31, 1990.

“(e) REPORT.—The Secretary of the Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text [tax] status of day care providers compensated pursuant to the program described in the section no later than December 31, 1989.”

[The due date for the report referred to in section 6305(e) of Pub. L. 100-647, set out above, extended to Jan. 1, 1992, by Pub. L. 101-508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388-559.]

**CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE**

Pub. L. 100-647, title VIII, §8018, Nov. 10, 1988, 102 Stat. 3794, provided that: “In the case of any State (within the meaning of section 3121(e)(1) of the Internal Revenue Code of 1986) or political subdivision thereof which received a letter ruling of the Internal Revenue

Service issued after December 31, 1983, and before the date of the enactment of this Act [Nov. 10, 1988] maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of ‘wages’ for purposes of tax liability under section 3121(v)(1)(B) of such Code, such State or political subdivision shall be relieved of any liability for taxes under such section 3121(v)(1)(B) which, in good faith reliance on such letter ruling, were not paid and which would otherwise have been required to be paid (but for this section) on or before the earlier of the date of the enactment of this Act or the date of the receipt of a notice of revocation from the Internal Revenue Service of such letter ruling.”

**PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998**

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

**PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994**

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

**PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**FEDERAL LEGISLATIVE BRANCH EMPLOYEES; EXCLUSION OF CERTAIN RETIREMENT CONTRIBUTIONS FOR PURPOSES OF SUBSECTION (b)(5)(G)**

Federal employees not to be deemed subject to Federal retirement system for purposes of subsec. (b)(5)(G) of this section if employees are contributing reduced amounts by reason of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, see section 2601(c) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

**SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES**

For purposes of subsec. (b)(5) of this section as in effect in January 1983 and as in effect on and after January 1, 1984, service performed in the employ of a nonprofit organization described in section 501(c)(3) of this title by an employee who is required by law to be subject to subchapter III of chapter 83 of Title 5, Government Organization and Employees, with respect to such service, is considered to be service performed in the employ of an instrumentality of the United States, see section 2601(e) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

**REFUNDS TO CHURCHES OR QUALIFIED CHURCH-CONTROLLED ORGANIZATIONS**

Pub. L. 98-369, div. B, title VI, §2603(f), July 18, 1984, 98 Stat. 1130, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In any case where a church or qualified church-controlled organization

makes an election under section 3121(w) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes."

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

Pub. L. 98-118, § 4, Oct. 11, 1983, 97 Stat. 803, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 101(d) of the Social Security Amendments of 1983 [section 101(d) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note above], the amendments made by section 101(c) of such Act [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act [42 U.S.C. 409] or section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

**TREATMENT OF CERTAIN MEDICAL FACULTY PRACTICE PLANS**

Pub. L. 98-21, title I, § 125, Apr. 20, 1983, 97 Stat. 91, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to concurrent employment by 2 or more employers)—

"(1) the following entities shall be deemed to be related corporations:

"(A) a State university which employs health professionals as faculty members at a medical school, and

"(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

"(i) which employs faculty members of such medical school, and

"(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

"(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

"(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983."

**WAIVER OF EXEMPTION BY NONPROFIT ORGANIZATION; TERMINATION OF CERTIFICATE PERIOD ON OR AFTER MARCH 31, 1983, PROHIBITED**

Pub. L. 98-21, title I, § 102(d), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] apply."

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

Pub. L. 97-123, § 3(e), Dec. 29, 1981, 95 Stat. 1663, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of applying section 209 of the Social Security Act [section 409 of Title 42, The Public Health and Welfare], section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and section 3231(e) of such Code with respect to the parenthetical matter contained in section 209(b)(2) of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1986, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service."

**WAIVER OF EXEMPTION FROM SOCIAL SECURITY TAXES BY CERTAIN ORGANIZATIONS**

Pub. L. 96-605, title IV, § 401, Dec. 28, 1980, 94 Stat. 3531, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) WAIVER CERTIFICATE.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any waiver certificate filed by a qualified corporation (hereinafter in this section referred to as the "corporation") under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to waiver of exemption from social security taxes by certain organizations) shall be deemed not to be effective, for purposes of the taxes imposed by section 3101 of such Code, with respect to any wages—

"(A) paid by the Corporation to any employee thereof after December 31, 1972, and before April 1, 1975, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that the Corporation as refunded, prior to February 1, 1977, to such employee (or to his survivors or estate) the full amount of the taxes imposed by section 3101 of such Code on such wages, or

"(B) paid after March 31, 1975, and prior to July 1, 1977, by the Corporation to an individual as an employee of the Corporation, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that (i) such individual was not an employee of the Corporation on June 30, 1978, and (ii) no amount of the taxes imposed by section 3101 of such Code on such wages were withheld by the Corporation from such wages.

"(2) APPLICATION OF PARAGRAPH (1).—

"(A) EVIDENCE TO BE SUBMITTED TO SECRETARY.—The provisions of paragraph (1) shall not apply to wages described in subparagraph (A) or (B) of such paragraph unless, prior to the close of the one-year period which begins on the date of the enactment of this Act [Dec. 28, 1980], the Corporation furnishes to the Secretary of the Treasury or his delegate the evidence referred to in either such subparagraph.

"(B) TAX NOT IMPOSED.—If the provisions of paragraph (1) apply with respect to any wages paid by the Corporation to an employee thereof, no taxes imposed on such wages by section 3101 of the Internal Revenue Code of 1986 shall be payable, and no interest or penalty with respect to the imposition of taxes by such section on such wages (or with respect to the imposition of taxes by such section or section 3111 of such Code on any wages paid by the Corporation prior to January 1, 1978) shall be imposed or collected.

"(C) CREDIT AGAINST TAX.—Under regulations prescribed by the Secretary, there shall be allowed as a one-time credit against the tax imposed on the Corporation under section 3101 or 3111 of the Internal Revenue Code of 1986 (and any interest or penalties imposed thereon) an amount equal to the sum of—

"(i) all amounts of tax imposed by section 3101 of such Code which have been paid by the Cor-

poration with respect to wages to which paragraph (1) applies, and

“(ii) all amounts paid by such Corporation as a penalty or as interest with respect to the tax imposed by section 3101 or 3111 of such Code on such wages.

“(b) TREATMENT FOR PURPOSES OF SOCIAL SECURITY ACT.—In the administration of titles II and XVIII of the Social Security Act [42 U.S.C. 401 et seq. and 1395 et seq.], any wages paid to any individual to which the provisions of subsection (a) apply shall be treated as wages (within the meaning of section 209 of such Act) [42 U.S.C. 409] for purposes of determining—

“(1) entitlement to, or amount of, any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

“(2) entitlement of such individual to benefits under title XVIII of such Act [42 U.S.C. 1395 et seq.] or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

“(c) QUALIFIED CORPORATION DEFINED.—For purposes of this section, the term ‘qualified corporation’ means any corporation which—

“(1) filed a waiver certificate under section 3121 of the Internal Revenue Code of 1986 during 1968;

“(2) filed a second waiver certificate under such section during 1975 believing that no other waiver certificate had been filed;

“(3) received a refund of the taxes imposed by sections 3101 and 3111 of such Code with respect to certain wages paid to more than 120 but less than 180 employees who did not concur in the filing of the second waiver certificate; and

“(4) was notified during 1977 by the Internal Revenue Service that the certificate had been filed during 1968.

“(d) LIABILITY FOR TAXES.—Except as provided in subsection (a)(2)(C)(ii), nothing in this section shall be construed to relieve the Corporation of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1986 with respect to any wages paid by it to any individual for any period.”

#### REFUND OR CREDIT OF TAXES TO NONPROFIT ORGANIZATIONS AFTER SEPT. 9, 1976, ON TAXES PAID UNDER SECTIONS 3101 OR 3111; PROHIBITION; CONSTRUCTIVE FILING OF CERTIFICATE

Pub. L. 94-563, §2, Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Notwithstanding any other provision of law, no refund or credit of any tax paid under section 3101 or 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by an organization described in section 501(c)(3) of such Code which is exempt from income tax under section 501(a) of such Code shall be made on or after September 9, 1976, by reason of such organization’s failure to file a waiver certificate under section 3121(k)(1) of such Code (or the corresponding provision of prior law), if such organization is deemed to have filed such a certificate under section 3121(k)(4) of such Code (as added by the first section of this Act).”

#### REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(4) OF THIS SECTION

Pub. L. 95-216, title III, §312(c), Dec. 20, 1977, 91 Stat. 1533, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In any case where—

“(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, on or after the first day of the applicable period described in subparagraph (A)(ii) of such section 3121(k)(4) and before July 1, 1977; and

“(2) the service so performed does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code) because the waiver certificate which the organization is deemed to have filed is made inapplicable to such service by section 3121(k)(4)(C) of such Code, but would constitute employment (as so defined) in the absence of such section 3121(k)(4)(C), the remuneration paid for such service shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full payment of all of the taxes which would have been paid under section 3101 of such Code with respect to such remuneration but for such section 3121(k)(4)(C) (or by satisfactory evidence that appropriate arrangements have been made for the payment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for payment of the taxes which it would have been required to pay under section 3111 of such Code with respect to such remuneration in the absence of such section 3121(k)(4)(C).”

#### REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(5) OF THIS SECTION

Pub. L. 94-563, §3, Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 95-216, title III, §312(e), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In any case where—

“(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, at any time prior to the period for which such certificate is effective;

“(2) the taxes imposed by sections 3101 and 3111 of such Code were paid with respect to remuneration paid for such service, but such service (or any part thereof) does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code because the applicable taxes so paid were refunded or credited (otherwise than through a refund or credit which would have been allowed if a valid waiver certificate filed under section 3121(k)(1) of such Code had been in effect) prior to September 9, 1976; and

“(3) any portion of such service (with respect to which taxes were paid and refunded or credited as described in paragraph (2)) would constitute employment (as so defined) if the organization had actually filed under section 3121(k)(1) of such Code a valid waiver certificate effective as provided in section 3121(k)(5)(B) thereof (with such individual’s signature appearing on the accompanying list), the remuneration paid for the portion of such service described in paragraph (3) shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full repayment of the taxes which were paid under section 3101 of such Code with respect to such remuneration and so refunded or credited (or by satisfactory evidence that appropriate arrangements have been made for the repayment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such



organization shall be liable (notwithstanding any other provision of such Code) for repayment of any taxes which it paid under section 3111 of such Code with respect to such remuneration and which were refunded or credited to it.”

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS  
PRIOR TO FILING OF WAIVER CERTIFICATE

Pub. L. 86-778, title I, §105(b)(1)–(5), Sept. 13, 1960, 74 Stat. 943, 944, as amended by Pub. L. 89-97, title III, §316(c)(1), July 30, 1965, 79 Stat. 386; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) If—

“(A) an individual performed service in the employ of an organization with respect to which remuneration was paid before the first day of the calendar quarter in which the organization filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)],

“(B) such service would have constituted employment as defined in section 210 of such Act [42 U.S.C. 410] if the requirements of section 3121(k)(1) of such Code were satisfied,

“(C) such organization paid, on or before the due date of the tax return for the calendar quarter before the calendar quarter in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code, any amount, as taxes imposed by sections 3101 and 3111 of such Code with respect to such remuneration paid by the organization to the individual for such service,

“(D) such individual, or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of such Act [42 U.S.C. 405(c)(1)(C)]), requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.], and

“(E) the request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), (4), and (5), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.].

“(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A), on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of such Code.

“(3) Paragraph (1) shall not apply with respect to an individual who is employed by the organization referred to in paragraph (2) on the date the certificate is filed.

“(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of such Code) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 of such Code) is repaid before January 1, 1968, or, if later, the first day of the third year after the year in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code.

“(5) Paragraph (1) shall not apply to any service performed for the organization in a period for which a certificate filed pursuant to section 3121(k)(1) of such Code is not in effect.”

[Pub. L. 89-97, title III, §316(c)(2), July 30, 1965, 79 Stat. 387, provided that: “The amendment made by paragraph (1) [amending section 105(b) of Pub. L. 86-778, set out above] shall take effect on the date of the enactment of this Act [July 30, 1965]. The provisions of section 105(b) of the Social Security Amendments of

1960 [section 105(b) of Pub. L. 86-778] which were in effect before the date of the enactment of this Act [July 30, 1965] shall be applicable with respect to any request filed under section 105(b)(1) of such Amendments before such date. Nothing in the preceding sentence shall prevent the filing of a request under section 105(b)(1) of such Amendments as amended by this Act.”]

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS FOR  
WHICH REMUNERATION WAS PAID BEFORE JULY 30,  
1965, BUT AFTER FILING OF WAIVER CERTIFICATE

Pub. L. 89-97, title III, §316(d), July 30, 1965, 79 Stat. 387, provided that where an individual performed service for which remuneration was paid before July 30, 1965, by an organization which, before such date, filed a waiver certificate pursuant to subsec. (k)(1) of this section, then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act, sections 401 et seq., of Title 42, The Public Health and Welfare, even though normally excluded from employment under title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS  
PERFORMED AFTER 1950 AND PRIOR TO JULY 1, 1960

Pub. L. 86-778, title I, §105(b)(1)–(5), Sept. 13, 1960, 74 Stat. 943, 944, provided that where an individual performed service in the employ of an organization after 1950 with respect to which remuneration was paid before 1960 and such service is normally excepted from employment under title II of the Social Security Act (42 U.S.C. 401 et seq.), then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS  
PERFORMED AFTER 1950 AND PRIOR TO 1957

Act Sept. 1, 1954, ch. 1206, title IV, §403, 68 Stat. 1098, as amended by acts Aug. 1, 1956, ch. 836, title IV, §401, 70 Stat. 855; Aug. 27, 1958, Pub. L. 85-785, §§1-3, 72 Stat. 938, provided that where an individual has been employed after 1950 and before Aug. 1, 1956, by an organization exempt from income tax under section 501(c)(3) of this title but which did not have in effect during the individual's period of employment a valid waiver certificate, or, which failed to have the individual's signature appear on the list of signatures of employees who concurred in the filing of such certificate, where one was in effect, and the service performed by the individual would have constituted employment for purposes of title II of the Social Security Act (42 U.S.C. 401 et seq.) had such requirements been met, then under certain conditions, the remuneration paid was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

### § 3122. Federal service

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including such service which is medicare qualified government employment (as defined in section 3121(u)(3)), including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumen-

tality having the control of such service, or by such agents as such head may designate. In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made. Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Department in which the Coast Guard is operating, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary of the Department in which the Coast Guard is operating shall be deemed to be the head of such instrumentality. (Aug. 16, 1954, ch. 736, 68A Stat. 428; Sept. 1, 1954, ch. 1206, title II, §§ 202(c), 203(a), 68 Stat. 1090; Aug. 1, 1956, ch. 837, title IV, § 411(b), (c), 70 Stat. 879; Pub. L. 85-840, title IV, § 402(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 85-866, title I, § 70, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87-293, title II, § 202(a)(3), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89-97, title III, § 320(b)(3), July 30, 1965, 79 Stat. 393; Pub. L. 90-248, title I, § 108(b)(3), Jan. 2, 1968,

81 Stat. 835; Pub. L. 92-5, title II, § 203(b)(3), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92-236, § 203(b)(3), July 1, 1972, 86 Stat. 419; Pub. L. 93-66, § 203(b)(3), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93-233, § 5(b)(3), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94-455, title XIX, § 1903(a)(4), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97-248, title II, § 278(a)(3), Sept. 3, 1982, 96 Stat. 560; Pub. L. 99-272, title XIII, § 13205(a)(2)(C), Apr. 7, 1986, 100 Stat. 315; Pub. L. 100-647, title VIII, § 8015(a)(2), Nov. 10, 1988, 102 Stat. 3791; Pub. L. 101-508, title XI, § 11331(d)(2), Nov. 5, 1990, 104 Stat. 1388-468; Pub. L. 103-66, title XIII, § 13207(d)(4), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103-296, title III, § 319(a)(2), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 109-241, title IX, § 902(i), July 11, 2006, 120 Stat. 567.)

#### REFERENCES IN TEXT

The Peace Corps Act, referred to in text, is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, 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.

#### AMENDMENTS

2006—Pub. L. 109-241 substituted "Secretary of the Department in which the Coast Guard is operating" for "Secretary of Transportation" in two places.

1994—Pub. L. 103-296 inserted after first sentence "In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made."

1993—Pub. L. 103-66 substituted "contribution and benefit base limitation" for "applicable contribution base limitation".

1990—Pub. L. 101-508 substituted "applicable contribution base limitation" for "contribution and benefit base limitation".

1988—Pub. L. 100-647 struck out from first sentence "the determination whether an individual has performed service which constitutes employment as defined in section 3121(b)," after "section 3121(p) are applicable," and "which constitutes wages as defined in section 3121(a)" after "remuneration for such service", and inserted after first sentence "Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages."

1986—Pub. L. 99-272 substituted "including such service which is medicare qualified government employment (as defined in section 3121(u)(3))" for "including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))".

1982—Pub. L. 97-248 inserted "including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))."

1976—Pub. L. 94-455 substituted "Secretary of Transportation" for "Secretary" in two places.

1973—Pub. L. 93-233, § 5(b)(3), effective with respect to remuneration paid after 1973, substituted "\$13,200" for "\$12,600".

Pub. L. 93-233, § 5(d), applicable only with respect to remuneration paid after, and taxable year beginning after, 1973 (as provided in section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92-336 (set out as 1973 Amendment note hereunder) substituting "\$13,200" for "\$12,600".

Pub. L. 93-66, §203(b)(3), effective with respect to remuneration paid after 1973, substituted “\$12,600” for “\$12,000”.

Pub. L. 93-66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92-336 (set out as 1972 Amendment note hereunder) substituting “\$12,600” for “\$12,000”.

1972—Pub. L. 92-336, §203(b)(3)(A), substituted “\$10,800” for “\$9,000”.

Pub. L. 92-336, §203(b)(3)(B), effective with respect to remuneration paid after 1973, substituted “\$12,000” for “\$10,800”.

Pub. L. 92-336, §203(b)(3)(C), effective with respect to remuneration paid after 1974, substituted “contribution and benefit base” for “\$12,000”.

1971—Pub. L. 92-5 substituted “\$9,000” for “\$7,800”.

1968—Pub. L. 90-248 substituted “\$7,800” for “\$6,600” in second sentence.

1965—Pub. L. 89-97 substituted “\$6,600” for “\$4,800”.

1961—Pub. L. 87-293 inserted “and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable,” after “section 3121(m)(1) are applicable.”

1958—Pub. L. 85-866 substituted “section” for “subsection” wherever appearing.

Pub. L. 85-840 substituted “\$4,800” for “\$4,200”.

1956—Act Aug. 1, 1956, included taxes with respect to service, performed as a member of a uniformed service, to which provisions of section 3121(m)(1) of this title are applicable, and authorized payment of tax imposed under section 3111 of this title from appropriations available for pay of members of the uniformed service.

1954—Act Sept. 1, 1954, §202(c), substituted “\$4,200” for “\$3,600”.

Act Sept. 1, 1954, §203(a), inserted provisions making section applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103-296, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103-66, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101-508, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VIII, §8015(a)(3), Nov. 10, 1988, 102 Stat. 3791, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 405 of Title 42, The Public Health and Welfare] shall apply to determinations relating to service commenced in any position on or after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99-272, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub.

L. 97-248, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93-66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92-336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92-5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by 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 this title.

#### 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 this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-840 applicable only with respect to remuneration paid after 1958, see section 402(e) of Pub. L. 85-840, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

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

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 202(c) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 202(d) of act Sept. 1, 1954, set out as a note under section 1401 of this title.

Act Sept. 1, 1954, ch. 1206, title II, §203(b), 68 Stat. 1091, provided that: “The amendment made by subsection (a) [amending this section] shall become effective January 1, 1955.”

#### REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENT UNAFFECTED

Section 202(a)(3) of Pub. L. 87-293, 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 section 2515 of Title 22, Foreign Relations and Intercourse.

### § 3123. 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. 429.)

### § 3124. Estimate of revenue reduction

The Secretary at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b)(9) and shall include such estimate in his annual report.

(Aug. 16, 1954, ch. 736, 68A Stat. 429; Sept. 1, 1954, ch. 1206, title II, §205(b), 68 Stat. 1091; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1954—Act Sept. 1, 1954, substituted “section 3121(b)(9)” for “section 3121(b)(10)”.

### § 3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia

#### (a) States

Except as otherwise provided in this section, in the case of the taxes imposed by sections 3101(b) and 3111(b) with respect to 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 thereby), the return and payment of such taxes may be made by the head of the agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

#### (b) Guam

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to

having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

#### (c) American Samoa

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

#### (d) District of Columbia

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Mayor of the District of Columbia or such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1).

(Added Pub. L. 86-778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; amended Pub. L. 89-97, title III, §§317(c)(1), (2), 320(b)(4), July 30, 1965, 79 Stat. 389, 393; Pub. L. 90-248, title I, §108(b)(4), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92-5, title II, §203(b)(4), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92-336, title II, §203(b)(4), July 1, 1972, 86 Stat. 419; Pub. L. 93-66, title II, §203(b)(4), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93-233, §5(b)(4), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94-455, title XIX, §1903(a)(5), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 99-272, title XIII, §13205(a)(2)(A)(i), (ii), Apr. 7, 1986, 100 Stat. 315; Pub. L. 101-508, title XI, §11331(d)(2), Nov. 5, 1990, 104 Stat. 1388-468; Pub. L. 103-66, title XIII, §13207(d)(4), Aug. 10, 1993, 107 Stat. 468.)

#### PRIOR PROVISIONS

A prior section 3125 was renumbered section 3128 of this title.

#### AMENDMENTS

1993—Pub. L. 103-66 which directed the amendment of this section by substituting “contribution and benefit base limitation” for “applicable contribution base limitation” without specifying where the substitution was to be made, was executed by making the substitution in subssecs. (a) to (d) to reflect the probable intent of Congress.

1990—Pub. L. 101-508 substituted “applicable contribution base limitation” for “contribution and benefit base limitation” in subssecs. (a) to (d).

1986—Pub. L. 99-272 inserted “States” in section catchline, added subsec. (a), and redesignated former subssecs. (a) to (c) as (b) to (d), respectively.

1976—Subsec. (c). Pub. L. 94-455 substituted “Mayor of the District of Columbia or such agents as he may designate” for “Commissioners of the District of Columbia or such agents as they may designate”.

1973—Pub. L. 93-233, §5(b)(4), effective with respect to remuneration paid after 1973, substituted “\$13,200” for “\$12,600” wherever appearing.

Pub. L. 93-233, §5(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92-336 (set out as 1973 Amendment note hereunder) substituting “\$13,200” for “\$12,600”.

Pub. L. 93-66, §203(b)(4), effective with respect to remuneration paid after 1973, substituted “\$12,600” for “\$12,000” wherever appearing.

Pub. L. 93-66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92-336 (set out as 1972 Amendment note hereunder) substituting “\$12,600” for “\$12,000”.

1972—Pub. L. 92-336, §203(b)(4)(A), substituted “\$10,800” for “\$9,000” wherever appearing.

Pub. L. 92-336, §203(b)(4)(B), effective with respect to remuneration paid after 1973, substituted “\$12,000” for “\$10,800” wherever appearing.

Pub. L. 92-336, §203(b)(4)(C), effective with respect to remuneration paid after 1974, substituted “contribution and benefit base” for “\$12,000”.

1971—Pub. L. 92-5 substituted “\$9,000” for “\$7,800” wherever appearing.

1968—Pub. L. 90-248 substituted “\$7,800” for “\$6,600” wherever appearing.

1965—Subsecs. (a), (b). Pub. L. 89-97, §320(b)(4), substituted “\$6,600” for “\$4,800”.

Subsec. (c). Pub. L. 89-97, §317(c)(1), added subsec. (c) and inserted reference to District of Columbia in section catchline.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103-66, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101-508, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99-272, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93-233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93-66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93-66, set out as a note under section 409 of Title 42.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92-336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-5 applicable only with respect to remuneration paid after December 1971, see

section 203(c) of Pub. L. 92-5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90-248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 317(c)(1), (2) of Pub. L. 89-97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by section 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89-97, set out as a note under section 410 of Title 42.

Amendment by section 320(b)(4) 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 this title.

#### EFFECTIVE DATE

Section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86-778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

### § 3126. Return and payment by governmental employer

If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Added Pub. L. 99-509, title IX, §9002(a)(1), Oct. 21, 1986, 100 Stat. 1970.)

#### PRIOR PROVISIONS

A prior section 3126 was renumbered section 3128 of this title.

#### EFFECTIVE DATE

Section, except as otherwise provided, effective with respect to payments due with respect to wages paid

after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99-509, set out as an Effective Date of 1986 Amendment note under section 418 of Title 42.

**§ 3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs**

**(a) In general**

Notwithstanding any other provision of this chapter (and under regulations prescribed to carry out this section), in any case where—

(1) an employer (or, if the employer is a partnership, each partner therein) is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and

(2) an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under subsection (b) an identical application for exemption from the taxes imposed by section 3101,

such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of the employees thereof who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.

**(b) Approval of application**

An application for exemption filed by an employer (or a partner) under subsection (a)(1) or by an employee under subsection (a)(2) shall be approved only if—

(1) such application contains or is accompanied by the evidence described in section 1402(g)(1)(A) and a waiver described in section 1402(g)(1)(B),

(2) the Commissioner of Social Security makes the findings (with respect to such sect or division) described in section 1402(g)(1)(C), (D), and (E), and

(3) no benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for section 203 or 222(b)<sup>1</sup> of the Social Security Act, would have become payable) to the individual filing the application at or before the time of such filing.

**(c) Effective period of exemption**

An exemption granted under this section to any employer with respect to wages paid to any of the employees thereof, or granted to any such employee, shall apply with respect to wages paid by such employer during the period—

(1) commencing with the first day of the first calendar quarter, after the quarter in

which such application is filed, throughout which such employer (or, if the employer is a partnership, each partner therein) or employee meets the applicable requirements specified in subsections (a) and (b), and

(2) ending with the last day of the calendar quarter preceding the first calendar quarter thereafter in which (A) such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet the applicable requirements of subsection (a), or (B) the sect or division thereof of which such employer (or, if the employer is a partnership, any partner therein) or employee is a member is found by the Commissioner of Social Security to have ceased to meet the requirements of subsection (b)(2).

(Added Pub. L. 100-647, title VIII, §8007(a)(1), Nov. 10, 1988, 102 Stat. 3781; amended Pub. L. 101-239, title X, §10204(b)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 103-296, title I, §108(h)(3), Aug. 15, 1994, 108 Stat. 1487.)

**REFERENCES IN TEXT**

Sections 203 and 222(b) of the Social Security Act, referred to in subsec. (b)(3), are classified to sections 403 and 422(b), respectively, of Title 42, The Public Health and Welfare. Section 222(b) was repealed by Pub. L. 106-170, title I, §101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

**PRIOR PROVISIONS**

A prior section 3127 was renumbered section 3128 of this title.

**AMENDMENTS**

1994—Subsecs. (b)(2), (c)(2). Pub. L. 103-296 substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

1989—Subsec. (a). Pub. L. 101-239, §10204(b)(1)(B), substituted “the employees thereof” for “his employees” in concluding provisions.

Subsec. (a)(1). Pub. L. 101-239, §10204(b)(1)(A), inserted “(or, if the employer is a partnership, each partner therein)” after “an employer”.

Subsec. (b). Pub. L. 101-239, §10204(b)(1)(C), inserted “(or a partner)” after “an employer” in introductory provisions.

Subsec. (c). Pub. L. 101-239, §10204(b)(1)(D), substituted “the employees thereof” for “his employees” in introductory provisions.

Subsec. (c)(1). Pub. L. 101-239, §10204(b)(1)(E), inserted “(or, if the employer is a partnership, each partner therein)”.

Subsec. (c)(2). Pub. L. 101-239, §10204(b)(1)(F), substituted “such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet” for “such employer or the employee involved ceases to meet” in cl. (A) and inserted “(or, if the employer is a partnership, any partner therein)” after “such employer” in cl. (B).

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by 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 Title 42, The Public Health and Welfare.

**EFFECTIVE DATE OF 1989 AMENDMENT**

Pub. L. 101-239, title X, §10204(b)(2), Dec. 19, 1989, 103 Stat. 2474, provided that: “The amendments made by this subsection [amending this section] shall be effective as if they were included in the amendments made by section 8007(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3781) [Pub. L. 100-647].”

**EFFECTIVE DATE**

Section applicable to wages paid after Dec. 31, 1988, see section 8007(d) of Pub. L. 100-647, set out as an EF-

<sup>1</sup> See References in Text note below.

fective Date of 1988 Amendment note under section 1402 of this title.

### § 3128. Short title

This chapter may be cited as the “Federal Insurance Contributions Act.”

(Aug. 16, 1954, ch. 736, 68A Stat. 429, §3125; renumbered §3126, Pub. L. 86–778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; renumbered §3127, Pub. L. 99–509, title IX, §9002(a)(1), Oct. 21, 1986, 100 Stat. 1970; renumbered §3128, Pub. L. 100–647, title VIII, §8007(a)(1), Nov. 10, 1988, 102 Stat. 3781.)

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

## CHAPTER 22—RAILROAD RETIREMENT TAX ACT

Subchapter	Sec. <sup>1</sup>
A. Tax on employees .....	3201
B. Tax on employee representatives .....	3211
C. Tax on employers .....	3221
D. General provisions .....	3231
E. Tier 2 tax rate determination. ....	3241

#### AMENDMENTS

2001—Pub. L. 107–90, title II, §204(e)(5), Dec. 21, 2001, 115 Stat. 893, added item for subchapter E.

### Subchapter A—Tax on Employees

Sec.	
3201.	Rate of tax.
3202.	Deduction of tax from compensation.

### § 3201. Rate of tax

#### (a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year.

#### (b) Tier 2 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the percentage determined under section 3241 for any calendar year of the compensation received during such calendar year by such employee for services rendered by such employee.

#### (c) Cross reference

**For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).**

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L.

86–28, pt. II, §201(a), May 19, 1959, 73 Stat. 28; Pub. L. 88–133, title II, §201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§105(b)(1), 111(c)(1), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(a), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89–699, title III, §301(a), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 93–69, title I, §102(a), July 10, 1973, 87 Stat. 162; Pub. L. 94–93, title II, §201, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §1903(a)(6), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–34, title VII, §741(a), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§211(a), 221, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, §9031(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, §5125(a), Nov. 5, 1990, 104 Stat. 1388–285; Pub. L. 107–90, title II, §204(c), Dec. 21, 2001, 115 Stat. 892; Pub. L. 113–295, div. A, title II, §221(a)(100)(A), Dec. 19, 2014, 128 Stat. 4052.)

#### AMENDMENTS

2014—Subsec. (b). Pub. L. 113–295 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) establishing the tier 2 tax and its applicable percentage.

2001—Subsec. (b). Pub. L. 107–90 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.”

1990—Subsec. (a). Pub. L. 101–508 substituted “applicable” for “following” before “percentage of the” and provision defining the term “applicable percentage” for provision specifying that in the case of compensation received during 1985 the rate of tax was 7.05 percent, for 1986 or 1987 the rate was 7.15 percent, for 1988 or 1989 the rate was 7.51 percent, and 1990 or thereafter the rate was 7.65 percent.

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

“In the case of compensation received during:	The rate shall be:
1985 .....	3.50
1986 or thereafter .....	4.25.”

1983—Pub. L. 98–76, §221, amended section generally, substituting a two tiered tax system with accompanying tax rate tables and a cross reference to section 3231 of this title, for provisions which had taxed an employee at 2.75 percent of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month and which had provided that the rate of tax imposed by subsection (a) be increased by the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month.

Pub. L. 98–76, §211(a), substituted “2.75 percent” for “2.0 percent”.

1981—Subsec. (a). Pub. L. 97–34 added subsec. (a).

Subsec. (b). Pub. L. 97–34 designated existing provisions as subsec. (b) and substituted “The rate of tax imposed by subsection (a) shall be increased by” for “In

<sup>1</sup> Section numbers editorially supplied.

addition to other taxes, there is hereby imposed on the income of every employee a tax rate equal to”.

1976—Pub. L. 94-455 struck out “of the Internal Revenue Code of 1954” after “wages by section 3101(a)”, “of such Code” after “rate imposed by section 3101(b)”, “after September 30, 1973,” after “for services rendered by him”, “of the Internal Revenue Code of 1954” after “as defined in section 3121”, and “after September 30, 1973” after “for any month”.

1975—Pub. L. 94-93 inserted “in any calendar month” after “compensation paid”.

1973—Pub. L. 93-69 substituted new tax rate provisions on income of employee for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¼ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1966—Pub. L. 89-700 substituted “rendered after September 30, 1965” for “rendered after December 31, 1964”, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “\$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended”.

Pub. L. 89-699 substituted “7 percent” for “6¾ percent” in subd. (3), “7¼ percent” for “7 percent” in subd. (4), and “7½ percent” for “7¼ percent” in subd. (5).

1965—Pub. L. 89-212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 6¼ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid to such employee for services rendered by him after Dec. 31, 1961, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended”.

Pub. L. 89-97 substituted “the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¼ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)” for “the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956” and inserted “plus the rate imposed by section 3101(b)” after “section 3101(a)”, respectively.

1963—Pub. L. 88-133 limited existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Pub. L. 86-28 increased tax from 6¼ percent of compensation not in excess of \$350 for any calendar month to 6¾ percent of the compensation not in excess of \$400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after Dec. 31, 1964, by a number of percentage points equal at any given time to the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted “\$350” for “\$300”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

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

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9031(b), Dec. 22, 1987, 101 Stat. 1330-296, provided that: “The amendment made by this section [amending this section] shall apply with respect to compensation received after December 31, 1987.”

#### EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Pub. L. 98-76, title II, §212, Aug. 12, 1983, 97 Stat. 419, provided that: “The amendments made by this part [part I (§§211, 212) of subtitle A of title II of Pub. L. 98-76, amending this section, sections 3211 and 3221 of this title, and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after December 31, 1983, and before January 1, 1985.”

Pub. L. 98-76, title II, §227(a), Aug. 12, 1983, 97 Stat. 426, provided that: “The amendments made by sections 221, 222, 223, and 225 [amending this section and sections 3202, 3211, 3221, and 3231 of this title and section 430 of Title 42] shall apply to remuneration paid after December 31, 1984.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title VII, §741(e), Aug. 13, 1981, 95 Stat. 347, provided that: “The amendments made by this section [amending this section and sections 3211, 3221, and 3231 of this title and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after September 30, 1981.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-93, title II, §207, Aug. 9, 1975, 89 Stat. 467, provided that: “The amendments made by sections 201 through 205 of this title [amending this section and sections 3211, 3221, and 3231 of this title] shall apply for taxable years ending on or after the date of the enactment of this Act [Aug. 9, 1975] and for taxable years ending before the date of the enactment of this Act as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on the date of enactment of this Act. The amendment made by section 206 of this title [amending section 3231 of this title] shall apply for taxable years beginning on or after the date of enactment of this Act:



*Provided, however,* That with respect to payment made prior to the date of enactment of this Act, the employee may file a written request under section 206 within six months after the enactment of this Act.”

#### EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-69, title I, § 109(b), July 10, 1973, 87 Stat. 165, provided that: “The amendments made by section 102 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall become effective on October 1, 1973, and shall apply only with respect to compensation paid for services rendered on or after that date: *Provided, however,* That such amendments shall not be applicable to any dock company, common carrier railroad, or railway labor organization described in section 1(a) of the Railroad Retirement Act of 1937 [section 228a(a) of Title 45, Railroads], with respect to those of its employees covered as of October 1, 1973, by a private supplemental pension plan established through collective bargaining, where a moratorium in an agreement made on or before March 8, 1973, is applicable to changes in rates of pay contained in the current collective-bargaining agreement covering such employees, until the earlier of (1) the date as of which such moratorium expires, or (2) the date as of which such dock company, common carrier railroad, or railway labor organization agrees through collective bargaining to make the provisions of such amendments applicable.”

#### EFFECTIVE DATE OF 1965 AMENDMENTS

Pub. L. 89-212, § 6, Sept. 29, 1965, 79 Stat. 862, provided that: “The amendments made by sections 1 and 3 of this Act [amending sections 228b, 228c, and 228e of Title 45, Railroads] shall take effect with respect to annuities accruing and deaths occurring in months after the month in which this Act is enacted [September 1965], and shall apply also to annuities paid in lump sums equal to their commuted value because of a reduction in such annuities under section 2(e) of the Railroad Retirement Act of 1937 [section 228b(e) of Title 45], as in effect before the amendments made by this Act, as if such annuities had not been paid in such lump sums: *Provided, however,* That the amounts of such annuities which were paid in lump sums equal to their commuted value shall not be included in the amount of annuities which become payable by reason of section 1 of this Act [amending section 228b of Title 45]. The amendments made by section 2 of this Act [amending sections 3203, 3231, 3402, 6053, and 6652 of this title, and section 228a of Title 45] shall apply only with respect to tips received after 1965. The amendments made by section 4 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall apply only with respect to calendar months after the month in which this Act is enacted. The amendments made by section 5 of this Act [amending this section and sections 3211 and 3221 of this title] shall apply only with respect to compensation paid for services rendered after September 30, 1965.”

Pub. L. 89-97, title I, § 105(b)(4), July 30, 1965, 79 Stat. 336, provided that: “The amendments made by this subsection [amending this section and sections 3211 and 3221 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1965.”

Amendment by section 111(c)(1) of Pub. L. 89-97 applicable to calendar year 1966, or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act [this chapter] provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act [section 3101 et seq. of this title] provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 13951-1 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-28, title II, § 202, May 19, 1959, 73 Stat. 30, provided that: “The amendments made by section 201

[amending this section and sections 3202, 3211, and 3221 of this title] shall, except as otherwise provided in such amendments, be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid after the month of such enactment, for services rendered after such month of enactment.”

#### EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 31, 1954, ch. 1164, pt. IV, § 407, 68 Stat. 1042, as amended by act Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095, provided that: “The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by section 206 [amending this section and sections 3202, 3211, 3221, and 3231 of this title] shall become effective as if enacted as a part of the Internal Revenue Code of 1986.”

#### SEPARABILITY

Pub. L. 93-69, title III, § 301, July 10, 1973, 87 Stat. 168, provided that: “If any provision of this Act [amending this section, sections 3202, 3211, and 3221 of this title, sections 228b, 228c, and 228e of Title 45, Railroads, and section 15a of former Title 49, and enacting provisions set out as notes under this section, and sections 228b, 228c, 228f, and 228o of Title 45] or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or the application of such provision to other persons or circumstances shall not be affected thereby.”

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

### § 3202. Deduction of tax from compensation

#### (a) Requirement

The taxes imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the taxes from the compensation of the employee as and when paid. An employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (3) of section 3231(e) is applicable may deduct an amount equivalent to such taxes with respect to such tips from any compensation of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20.

#### (b) Indemnification of employer

Every employer required under subsection (a) to deduct the tax shall be liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

#### (c) Special rule for tips

(1) In the case of tips which constitute compensation, subsection (a) shall be applicable

only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such compensation of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the taxes imposed by section 3201, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceed the compensation of the employee (excluding tips) from which the employer is required to collect the taxes under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of compensation (exclusive of tips) during such quarter as if the tips so estimated constituted actual tips so reported, and

(C) to deduct upon any payment of compensation (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such compensation of the employee during the quarter to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the quarter.

(4) If the taxes imposed by section 3201 with respect to tips which constitute compensation exceed the portion of such taxes which can be collected by the employer from the compensation of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

**(d) Special rule for certain taxable group-term life insurance benefits**

**(1) In general**

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3201 on such payments, and

(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

**(2) Benefits to which subsection applies**

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes compensation, and

(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86-28, pt. II, §201(b), May 19, 1959, 73 Stat. 29; Pub. L. 88-133, title II, §202, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89-212, §§2(a), 4, Sept. 29, 1965, 79 Stat. 858, 861; Pub. L. 89-700, title III, §301(iii), (v), Oct. 30, 1966, 80 Stat. 1088; Pub. L. 93-69, title I, §102(b), July 10, 1973, 87 Stat. 162; Pub. L. 94-455, title XIX, §§1903(a)(7), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1807, 1834; Pub. L. 98-76, title II, §225(a)(2), (c)(1)(A), (B), (2)-(5), Aug. 12, 1983, 97 Stat. 425; Pub. L. 101-508, title V, §5124(b), Nov. 5, 1990, 104 Stat. 1388-285.)

**AMENDMENTS**

1990—Subsec. (d). Pub. L. 101-508 added subsec. (d).

1983—Subsec. (a). Pub. L. 98-76, §225(a)(2), (c)(1)(A), (2), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, substituted “the amount of the taxes” for “the amount of the tax”, and “such taxes” for “such tax”, and struck out provisions that if an employee was paid compensation by more than one employer for services rendered during any calendar month and the aggregate of such compensation was in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month would be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him to the employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month; and that in the event that the compensation so paid by such employers to the employee for services rendered during such month was less than an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month, each subordinate unit of a national railway-labor-organization employer would deduct such proportion of any additional tax as the compensation paid by such employer to such employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month.

Subsec. (c)(2). Pub. L. 98-76, §225(c)(1)(B), (3), (5), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, “the taxes under paragraph (1)” for “the tax under paragraph (1)”, and “exceed” for “exceeds”.

Subsec. (c)(4). Pub. L. 98-76, §225(c)(1)(B), (4), (5), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, “such taxes” for “such tax”, and “exceed” for “exceeds”.

1976—Subsec. (a). Pub. L. 94-455, §1903(a)(7)(A), struck out provisions relating to the September 30, 1973, qualification on the applicability of provisions of this subsection and “of the Internal Revenue Code of 1954” before “for any month” wherever appearing.

Subsec. (b). Pub. L. 94-455, §1903(a)(7)(B), struck out “made” after “to deduct the tax shall be”.

Subsec. (c)(3). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1973—Subsec. (a). Pub. L. 93-69, in second sentence reading “If an employee . . .”, substituted “1973” for “1965” wherever appearing, struck out “(i) \$450, or (ii)” before “an amount equal to” in two places, and struck out “, whichever is greater,” after “Internal Revenue Code of 1954” in two places.

1966—Subsec. (a). Pub. L. 89-700 substituted “after September 30, 1965” for “after the month in which this provision was amended in 1959” in six places, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “\$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended” in two places.

1965—Subsec. (a). Pub. L. 89-212, §§2(a)(1), 4, inserted sentence permitting an employer who is furnished by an employee a written statement of tips pursuant to section 6053(a) to which par. (3) of section 3231(e) is applicable to deduct an amount equivalent to such tax with respect to such tips from any compensation of the employee under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended” in two places.

Subsec. (c). Pub. L. 89-212, §2(a)(2), added subsec. (c).

1963—Subsec. (a). Pub. L. 88-133 limited existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86-28 substituted “after the month in which this provision was amended in 1959” for “after 1954” and for “after December 31, 1954” in five places, and “\$400” for “\$350” in two places.

1954—Subsec. (a). Act Aug. 31, 1954, substituted “\$350” for “\$300” wherever appearing.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to coverage provided after Dec. 31, 1990, see section 5124(c) of Pub. L. 101-508, set out as a note under section 3102 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(7) of Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for

services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93-69, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 2(a) of Pub. L. 89-212 effective only with respect to tips received after 1965, and amendment by section 4 of Pub. L. 89-212 effective only with respect to calendar months after the month in which Pub. L. 89-212 is enacted, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86-28, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

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

### Subchapter B—Tax on Employee Representatives

Sec.	
3211.	Rate of tax.
3212.	Determination of compensation.

#### § 3211. Rate of tax

##### (a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

##### (b) Tier 2 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the percentage determined under section 3241 for any calendar year of the compensation received during such calendar year by such employee representative for services rendered by such employee representative.

##### (c) Cross reference

**For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).**

(Aug. 16, 1954, ch. 736, 68A Stat. 432; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86-28, pt. II, §201(c), May 19, 1959, 73 Stat. 29; Pub. L. 88-133, title II, §201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89-97, title I, §§105(b)(2), 111(c)(2), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89-212, §§4, 5(b), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89-699,

title III, §301 (b), (d), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89-700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91-215, §4, Mar. 17, 1970, 84 Stat. 70; Pub. L. 93-69, title I, §102(c), July 10, 1973, 87 Stat. 162; Pub. L. 94-93, title II, §202, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §1903(a)(8), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97-34, title VII, §741(b), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98-76, title II, §§211(c), 223, Aug. 12, 1983, 97 Stat. 419, 421; Pub. L. 101-508, title V, §5125(b), Nov. 5, 1990, 104 Stat. 1388-285; Pub. L. 107-90, title II, §§203(a), 204(b), Dec. 21, 2001, 115 Stat. 891; Pub. L. 113-295, div. A, title II, §221(a)(100)(B), Dec. 19, 2014, 128 Stat. 4052.)

#### AMENDMENTS

2014—Subsec. (b). Pub. L. 113-295 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) establishing the tier 2 tax and its applicable percentage.

2001—Subsec. (a). Pub. L. 107-90, §204(b), added subsec. (a) and struck out former subsec. (a), which related to imposition of tier 1 and 2 taxes.

Subsec. (b). Pub. L. 107-90, §204(b), added subsec. (b).

Pub. L. 107-90, §203(a), struck out subsec. (b) which read as follows: "In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative."

Subsec. (c). Pub. L. 107-90, §204(b), added subsec. (c).

1990—Subsec. (a). Pub. L. 101-508 substituted "applicable" for "following" before "percentage of the" and provision defining the term "applicable percentage" for provision specifying that in the case of compensation received during 1985 the rate of tax was 14.10 percent, for 1986 or 1987 the rate was 14.30 percent, for 1988 or 1989 the rate was 15.02 percent, and for 1990 or thereafter the rate was 15.30 percent.

1983—Subsec. (a). Pub. L. 98-76, §223, substituted provisions imposing a two tiered tax on each employee representative equal to the percentage of the compensation received during any calendar year by such employee representative for services rendered as is set out in accompanying tables, for provisions that had imposed on each employee representative a tax equal to 12.75 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of so much of the compensation paid in any calendar month to such employee representative for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wage" as defined in section 3121 for any month.

Pub. L. 98-76, §211(c), substituted "12.75 percent" for "11.75 percent".

1981—Subsec. (a). Pub. L. 97-34 substituted "11.75" for "9.5".

1976—Subsec. (a). Pub. L. 94-455 substituted "3111(a), and 3111(b)" for "3111(a), 3111(b)", struck out "of the Internal Revenue Code of 1954" before "of so much of the compensation", "after September 30, 1973," after "rendered by him", "of the Internal Revenue Code of 1954" after "as defined in section 3121", and "after September 30, 1973" after "for any month".

1975—Subsec. (a). Pub. L. 94-93 inserted "in any calendar month" after "compensation paid".

1973—Subsec. (a). Pub. L. 93-69 substituted new tax rate provisions on income of employee representatives for services rendered after Sept. 30, 1973, for former provisions which prescribed 12½, 13, 14, 14½, and 15 percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121

of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1970—Subsec. (b). Pub. L. 91-215 substituted the rate of excise tax imposed on every employer under section 3221(c) of this title for a flat 2-cents per man hour tax as the rate for additional taxes imposed on the income of employee representatives for each man hour of compensation paid.

1966—Pub. L. 89-700 substituted "rendered after September 30, 1965" for "rendered after December 31, 1964", and "(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "\$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended".

Pub. L. 89-699, §301(b), (d), designated existing provisions as subsec. (a), and substituted "14 percent" for "13½ percent" in subd. (3), "14½ percent" for "14 percent" in subd. (4), and "15 percent" for "14½ percent" in subd. (5).

Subsec. (b). Pub. L. 89-699, §301(d), added subsec. (b).

1965—Pub. L. 89-212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended".

Pub. L. 89-97 substituted "the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3101(b)" after "section 3101(a)", respectively.

1963—Pub. L. 88-133 limited the existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Pub. L. 86-28 increased the tax from 12½ percent of the compensation not in excess of \$350 for any calendar month to 13½ percent of the compensation not in excess of \$400 for any calendar month for services rendered before Jan. 1, 1962, and to 14½ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points equal at any given time to twice

the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted “\$350” for “\$300”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-90, title II, §203(c), Dec. 21, 2001, 115 Stat. 891, provided that: “The amendments made by this section [amending this section and section 3221 of this title] shall apply to calendar years beginning after December 31, 2001.”

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

#### EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(c) of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of this title.

Amendment by section 223 of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94-93, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1972; and applicable to railway labor organization covered by private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93-69, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-699, title III, §301(f), Oct. 30, 1966, 80 Stat. 1079, as amended by Pub. L. 91-215, §8, Mar. 17, 1970, 84 Stat. 72, provided that: “The amendments made by subsections (d) and (e) of this section [amending this section and section 3221 of this title] shall be effective with respect to man-hours, beginning with the first month following enactment of this Act [Oct. 30, 1966], for which compensation is paid.”

#### EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89-212 effective only with respect to calendar months after month in which Pub. L. 89-212 is enacted [September 1965], and amendment by section 5(b) of Pub. L. 89-212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(2) of Pub. L. 89-97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89-97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(2) of Pub. L. 89-97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 1395i-1 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86-28, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

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

#### SEPARABILITY

Pub. L. 91-215, §9, Mar. 17, 1970, 84 Stat. 72, provided that: “If any provision of this Act [amending this section, section 3221 of this title, and sections 228c and 228o of Title 45, Railroads, enacting provisions set out as notes under section 3221 of this title and sections 228c and 228o of Title 45, and amending provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.”

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

### § 3212. Determination of compensation

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 432.)

### Subchapter C—Tax on Employers

Sec. 3221.	Rate of tax.
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**§ 3221. Rate of tax****(a) Tier 1 tax**

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of compensation paid during any calendar year by such employer for services rendered to such employer. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year.

**(b) Tier 2 tax**

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the percentage determined under section 3241 for any calendar year of the compensation paid during such calendar year by such employer for services rendered to such employer.

**(c) Special rate for certain individuals hired in 2010****(1) In general**

In the case of compensation paid by a qualified employer during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, with respect to having a qualified individual in the employer’s employ for services rendered to such qualified employer, the applicable percentage under subsection (a) shall be equal to the rate of tax in effect under section 3111(b) for the calendar year.

**(2) Qualified employer**

The term “qualified employer” means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

**(3) Qualified individual**

For purposes of this subsection, the term “qualified individual” means any individual who—

(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

(D) is not an individual described in section 51(i)(1) (applied by substituting “qualified employer” for “taxpayer” each place it appears).

**(4) Election**

A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

**(5) Special rule for first calendar quarter of 2010****(A) Nonapplication of exemption during first quarter**

Paragraph (1) shall not apply with respect to compensation paid during the first calendar quarter of 2010.

**(B) Crediting of first quarter exemption during second quarter**

The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to compensation paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.

**(d) Cross reference**

**For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).**

(Aug. 16, 1954, ch. 736, 68A Stat. 433; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, §201(d), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, §202, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§105(b)(3), 111(c)(3), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(c), Sept. 29, 1965, 79 Stat. 861, 862; Pub. L. 89–699, title III, §301(c), (e), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §§301(iii), (v), (vi), 302, Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91–215, §5(a), (b)(1), Mar. 17, 1970, 84 Stat. 71; Pub. L. 93–69, title I, §102(d)–(f), July 10, 1973, 87 Stat. 162, 163; Pub. L. 93–445, title V, §501, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–93, title II, §203, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §§1903(a)(9), 1906(b)(13)(G), Oct. 4, 1976, 90 Stat. 1808, 1835; Pub. L. 97–34, title VII, §741(c), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§211(b), 222, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, §9032(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, §5125(c), Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 107–90, title II, §§203(b), 204(a), Dec. 21, 2001, 115 Stat. 891; Pub. L. 111–147, title I, §101(d)(1), Mar. 18, 2010, 124 Stat. 74; Pub. L. 113–295, div. A, title II, §221(a)(100)(C), Dec. 19, 2014, 128 Stat. 4052.)

**REFERENCES IN TEXT**

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of the enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

**AMENDMENTS**

2014—Subsec. (b). Pub. L. 113–295 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) establishing the tier 2 tax and its applicable percentage.

2010—Subsecs. (c), (d). Pub. L. 111–147 added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (b). Pub. L. 107–90, §204(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.”

Subsecs. (c) to (e). Pub. L. 107–90, §203(b), redesignated subsec. (e) as (c) and struck out former subsecs.

(c) and (d) which provided, in subsec. (c), for imposition of excise tax on every employer, with respect to having individuals in his employ, for each man-hour for which compensation was paid by such employer for services rendered to him during any calendar quarter, and for credit against such tax of amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer, and, in subsec. (d), that such tax would not apply to an employer with respect to employees covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees.

1990—Subsec. (a). Pub. L. 101-508 substituted “applicable” for “following” before “percentage of” and provision defining “applicable percentage” for provision specifying the tax rate to be 7.05 percent, 7.15 percent, 7.51 percent, and 7.65 percent in the case of compensation paid during 1985, 1986 or 1987, 1988 or 1989, or 1990 or thereafter, respectively.

1987—Subsec. (b). Pub. L. 100-203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

<b>“In the case of compensation paid during:</b>	<b>The rate shall be:</b>
1985 .....	13.75
1986 or thereafter .....	14.75.”

1983—Subsec. (a). Pub. L. 98-76, § 222(a), in amending subsec. (a) generally, substituted provisions imposing an excise tax on employers, with respect to having individuals in his employ, equal to a percentage of compensation paid as set out in an accompanying table, for provisions which imposed an excise tax on employers, with respect to having individuals in his employ, equal to 12.75 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month, with certain exceptions dealing with multiple employers.

Pub. L. 98-76, § 211(b), substituted “12.75 percent” for “11.75 percent”.

Subsec. (b). Pub. L. 98-76, § 222(a), in amending subsec. (b) generally, substituted provisions imposing a second tier excise tax on employers equal to a percentage of compensation paid as set out in an accompanying table, for provisions that the rate of tax imposed by former subsec. (a) would be increased by the rate of tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b).

Subsec. (e). Pub. L. 98-76, § 222(b), added subsec. (e).

1981—Subsec. (a). Pub. L. 97-34 substituted in first sentence “11.75” for “9.5”.

1976—Subsec. (a). Pub. L. 94-455, §§ 1903(a)(9)(A), 1906(b)(13)(G), struck out provisions relating to the September 30, 1973 qualification on the applicability of provisions of this subsection, “of the Internal Revenue Code of 1954” after “as defined in section 3121” wherever appearing, and “of the Treasury” after “to the Secretary”.

Subsec. (b). Pub. L. 94-455, § 1903(a)(9)(B), struck out “, with respect to compensation paid for services rendered after September 30, 1973,” after “shall be increased”, “of the Internal Revenue Code of 1954” after “by section 3111(a)” and “of such Code” after “by section 3111(b)”.

Subsec. (c). Pub. L. 94-455, §§ 1903(a)(9)(C), 1906(b)(13)(G), struck out “(1) at the rate of two cents for the period beginning November 1, 1966, and ending March 31, 1970, and (2) commencing April 1, 1970,” after “during any calendar quarter,” , “commencing with the quarter beginning April 1, 1970” after “required for each calendar quarter”, “of the Treasury” after “rep-

resentatives, and the Secretary” and “of the Treasury” after “shall certify to the Secretary”.

1975—Subsec. (a). Pub. L. 94-93 substituted “compensation paid in any calendar month by such employer” for “compensation paid by such employer”.

1974—Subsec. (c). Pub. L. 93-445, § 501(a), struck out “for appropriation to the Railroad Retirement Supplemental Account provided for in section 15(b) of the Railroad Retirement Act of 1937” after “commencing April 1, 1970, at such rate as will make available”, substituted “at the level provided under section 3(j) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974” for “under section 3(j) of such Act”, and inserted “or section 2(h)(2) of the Railroad Retirement Act of 1974” after “section 3(j)(2) of the Railroad Retirement Act of 1937”.

Subsec. (d). Pub. L. 93-445, § 501(b), substituted “section 2(b) of the Railroad Retirement Act of 1974” for “section 3(j) of the Railroad Retirement Act of 1937” and “section 2(b) of such Act” for “section 3(j) of such Act”.

1973—Subsec. (a). Pub. L. 93-69, § 102(d), (e), substituted new tax rate provisions on employers for services rendered after Sept. 30, 1973, for former provisions which prescribed  $6\frac{1}{4}$ ,  $6\frac{1}{2}$ , 7,  $7\frac{1}{4}$ , and  $7\frac{1}{2}$  percent on income for services rendered after Sept. 30, 1965; Dec. 31, 1965; Dec. 31, 1966; Dec. 31, 1967; and Dec. 31, 1968, respectively, as is, with respect to any employee for any calendar month, not in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after Sept. 30, 1965, and, in first sentence, substituted “1973” for “1965” wherever appearing, struck out “(i) \$450, or (ii)” before “an amount equal to” in two places, and struck out “, whichever is greater,” after “Internal Revenue Code of 1954” in two places, respectively.

Subsec. (b). Pub. L. 93-69, § 102(f), substituted “1973” for “1965” and “by the rate of tax imposed with respect to wages by section 3111(a) of the Internal Revenue Code of 1954 plus the rate imposed by section 3111(b) of such Code”, for “by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b) at such time exceeds  $2\frac{3}{4}$  percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)”.

1970—Subsec. (c). Pub. L. 91-215, § 5(a), provided a variable standard of taxation on employers for services rendered them during any calendar quarter at the existing 2 cent rate for each man-hour of services for the period from Nov. 1, 1966 to Mar. 31, 1970, and thereafter at such rates as will permit supplemental annuity payments under section 228c(j) of this title, and authorized the Railroad Retirement Board to make the necessary determination of rates, and made it its duty to publish notice of such determinations in the Federal Register.

Subsec. (d). Pub. L. 91-215, § 5(b)(1), added subsec. (d).

1966—Subsec. (a). Pub. L. 89-700, §§ 301(iii), (v), 302, substituted “after September 30, 1965” for “after the month in which this provision was amended in 1959” in six places, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended” in four places, and inserted sentence providing that

where compensation for services rendered in a month is paid by two or more employers, one of the employers may, by notice to the Secretary, and by agreement with the other employer, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation in respect to which taxes are imposed by section 3201 and this section; and in such a case the liability of the other employer shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

Pub. L. 89-699, §301(c), substituted “7 percent” for “6¼ percent” in subd. (3), “7¼ percent” for “7 percent” in subd. (4), and “7½ percent” for “7¼ percent” in subd. (5).

Subsec. (b). Pub. L. 89-700, §301(vi), substituted “after September 30, 1965” for “after December 31, 1964”.

Subsec. (c). Pub. L. 89-699 added subsec. (c).

1965—Subsec. (a). Pub. L. 89-212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed an excise tax equal to 6¼ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid by such employer for services rendered to him after Dec. 31, 1961, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended” wherever appearing.

Subsec. (b). Pub. L. 89-97 substituted “the rate of the tax imposed with respect to wages by section 3111(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)” for “the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956” and inserted “plus the rate imposed by section 3111(b)” after “section 3111(a)”, respectively.

1963—Subsec. (a). Pub. L. 88-133 limited the existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86-28, §201(d)(1), (2)(A), (B), designated former provisions of section as subsec. (a), increased the tax from 6¼ percent of the compensation not in excess of \$350 for any calendar month to 6¾ percent of the compensation not in excess of \$400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and substituted “after the month in which this provision was amended in 1959” for “after 1954” and for “after December 31, 1954” in six places, “not more than \$400” for “not more than \$350”, and “less than \$400” for “less than \$350”.

Subsec. (b). Pub. L. 86-28, §201(d)(2)(C), added subsec. (b).

1954—Act Aug. 31, 1954, substituted “\$350” for “\$300” wherever appearing.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-147 applicable to compensation paid after Mar. 18, 2010, see section 101(e) of Pub. L. 111-147, set out as a note under section 51 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 203(b) of Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see

section 203(c) of Pub. L. 107-90, set out as a note under section 3211 of this title.

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

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9032(b), Dec. 22, 1987, 101 Stat. 1330-296, provided that: “The amendments made by this section [amending this section] shall apply with respect to compensation paid after December 31, 1987.”

#### EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(b) of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of this title.

Amendment by section 222 of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(9) of Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94-93, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-445, title VI, §604, Oct. 16, 1974, 88 Stat. 1361, provided that: “The amendments made by the provisions of title V of this Act [amending this section and section 6413 of this title] shall become effective on January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date.”

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93-69, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-699 effective with respect to man-hours, beginning with first month following Oct. 30, 1966, for which compensation is paid, see section 301(f) of Pub. L. 89-699, set out as a note under section 3211 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89-212 effective only with respect to calendar months after the month



in which Pub. L. 89-212 is enacted [September 1965], and amendment by section 5(c) of Pub. L. 89-212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(3) of Pub. L. 89-97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89-97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(3) of Pub. L. 89-97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 13951-1 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86-28, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

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

#### PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

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

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

### Subchapter D—General Provisions

Sec.	
3231.	Definitions.
3232.	Court jurisdiction.
3233.	Short title.

## § 3231. Definitions

### (a) Employer

For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with

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

### (b) Employee

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

### (c) Employee representative

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

cer or official representative in connection with the duties of his office.

**(d) Service**

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

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

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

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

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

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

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

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

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

*Provided however,* That an individual not a citizen or resident of the United States shall not be

deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

**(e) Compensation**

For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee, (ii) tips (except as is provided under paragraph (3)), (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment, or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5). Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a non-immigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering

such service has not previously rendered service, other than as such a delegate, which may be included in his “years of service” for purposes of the Railroad Retirement Act. Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from “wages” as used in such chapter shall be construed to require a similar exclusion from “compensation” in regulations prescribed for purposes of this chapter.

**(2) Application of contribution bases**

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

**(i) In general**

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

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

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

**(iii) Hospital insurance taxes**

Clause (i) shall not apply to—

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

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

**(B) Applicable base**

**(i) Tier 1 taxes**

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

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

For purposes of—

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

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

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

**(C) Successor employers**

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

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

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

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

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term “compensation” also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than \$20.

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

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

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

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

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

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

(5) The term “compensation” shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132.

(6) The term “compensation” shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

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

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

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

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

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

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

**(9) Meals and lodging**

The term “compensation” shall not include the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119.

**(10) Archer MSA contributions**

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

**(11) Health savings account contributions**

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

**(12) Qualified stock options**

The term “compensation” shall not include any remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock.

**(f) Company**

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

**(g) Carrier**

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

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

For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed by section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

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

For purposes of this chapter, if 2 or more related corporations which are employers concur-

rently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(Aug. 16, 1954, ch. 736, 68A Stat. 434; Aug. 31, 1954, ch. 1164, pt. II, §206(b), 68 Stat. 1040; Pub. L. 89-212, §2(b), Sept. 29, 1965, 79 Stat. 859; Pub. L. 90-624, §1, Oct. 22, 1968, 82 Stat. 1316; Pub. L. 94-92, title II, §203(b), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94-93, title II, §§204-206, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §§1903(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 94-547, §4(b), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 95-473, §2(a)(2)(G), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 97-34, title VII, §§741(d)(2), 743(a)-(c), Aug. 13, 1981, 95 Stat. 347, 348; Pub. L. 97-123, §3(c), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98-76, title II, §225(a)(1), (3), (b), (c)(1)(C), (6)-(8), Aug. 12, 1983, 97 Stat. 424, 425; Pub. L. 98-369, div. A, title V, §531(d)(2), July 18, 1984, 98 Stat. 884; Pub. L. 98-611, §1(f), Oct. 31, 1984, 98 Stat. 3178; Pub. L. 98-612, §1(c), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99-514, title I, §122(e)(2), title XVIII, §1899A(41), Oct. 22, 1986, 100 Stat. 2112, 2960; Pub. L. 100-647, title I, §§1001(d)(2)(C)(ii), 1011B(a)(22)(B), Nov. 10, 1988, 102 Stat. 3351, 3486; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title X, §§10205(a), 10206(a), (b), 10207(a), (b), Dec. 19, 1989, 103 Stat. 2474-2476; Pub. L. 101-508, title XI, §§11331(c), 11704(a)(19), Nov. 5, 1990, 104 Stat. 1388-468, 1388-519; Pub. L. 103-66, title XIII, §13207(c), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103-296, title III, §320(a)(1)(D), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104-88, title III, §304(d), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104-191, title III, §301(c)(2)(A), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 106-554, §1(a)(7) [title II, §202(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629; Pub. L. 107-90, title II, §204(e)(3), (4), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108-173, title XII, §1201(d)(2)(A), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108-357, title II, §251(a)(2), title III, §320(b)(2), Oct. 22, 2004, 118 Stat. 1458, 1473; Pub. L. 113-295, div. A, title II, §221(a)(19)(B)(v), (100)(D), Dec. 19, 2014, 128 Stat. 4040, 4052.)

REFERENCES IN TEXT

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

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

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

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

The Railroad Retirement Act of 1974, referred to in subsec. (e)(4)(A)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to

subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

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

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

#### AMENDMENTS

2014—Subsec. (b). Pub. L. 113-295, §221(a)(100)(D), in first sentence substituted “compensation.” for “compensation; except that the term ‘employee’ shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935.” and struck out second sentence, which included pars. (1) to (4) and concluding provisions relating to an individual deemed to have been in the employment relation to a carrier on Aug. 29, 1935.

Subsec. (e)(7). Pub. L. 113-295, §221(a)(19)(B)(v), struck out par. (7) which read as follows: “The term ‘compensation’ shall not include any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).”

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

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

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

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

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

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

2000—Subsec. (e)(10). Pub. L. 106-554 substituted “Archer MSA” for “Medical savings account” in heading. 1996—Subsec. (e)(10). Pub. L. 104-191 added par. (10).

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

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

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

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

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

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

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

1990—Subsec. (e)(2)(B)(i). Pub. L. 101-508, §11331(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “Except as provided in clause (ii), the term ‘applicable base’ means for any calendar year the

contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.”

Subsec. (e)(8) to (10). Pub. L. 101-508, §11704(a)(19), redesignated pars. (9) and (10) as (8) and (9), respectively. 1989—Subsec. (e)(1). Pub. L. 101-239, §10207(b), inserted at end “Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from ‘wages’ as used in such chapter shall be construed to require a similar exclusion from ‘compensation’ in regulations prescribed for purposes of this chapter.”

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

Pub. L. 101-239, §10205(a), inserted “or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee” before “, (ii) tips”.

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

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

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

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

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

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

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

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

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

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

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

Subsec. (e)(2). Pub. L. 98-76, §225(a)(1), amended par. (2) generally, substituting provisions which exclude compensation in excess of applicable base, which define “applicable base”, and which provide for the applicability of successor employer provisions to this paragraph, for provisions that a payment made by an employer to an individual through the employer’s payroll would be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment was made, that an employee receiving retroactive wage payments would be deemed to be paid compensation in the period during which such compensation was earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid, that an employee would be deemed to be paid “for time lost” the amount he was paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he was paid by the employer for loss of earnings resulting from his displacement to a less re-

munerative position or occupation, and that if a payment was made by an employer with respect to a personal injury and included pay for time lost, the total payment would be deemed to be paid for time lost unless, at the time of payment, a part of such payment was specifically apportioned to factors other than time lost, in which event only such part of the payment as was not so apportioned would be deemed to be paid for time lost.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (e)(1). Pub. L. 94-547 provided that “compensation” not include amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, or an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a

separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

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

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

Pub. L. 94-92 increased from \$3 to \$25 amount of compensation earned in the service of a local lodge or division of a railway-labor-organization employer to be disregarded with respect to any calendar month in the determination of amount of taxes under sections 3201 and 3221.

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

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

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

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

Subsec. (h). Pub. L. 89-212, §2(b)(3), added subsec. (h).

1954—Subsec. (e)(1). Act Aug. 31, 1954, excluded from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(2) of Pub. L. 108-357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108-357, set out as a note under section 421 of this title.

Amendment by section 320(b)(2) of Pub. L. 108-357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108-357, set out as a note under section 108 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENT

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

#### EFFECTIVE DATE OF 2001 AMENDMENT

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

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of

Pub. L. 104-191, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1995 AMENDMENT

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

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103-66, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(c) of Pub. L. 101-508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101-508, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENTS

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

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

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

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

“(2) EXCEPTION.—The amendment made by subsection (a) shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1989, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.

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

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

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

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

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

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

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

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

“(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—For purposes of applying the amendment made by subsection

(b) to remuneration paid after December 31, 1989, which would have been taken into account before January 1, 1990, if such amendments had applied to periods before January 1, 1990, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

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

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

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

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

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

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

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(C)(ii) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

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

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(2) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENTS

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

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

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

#### EFFECTIVE DATE OF 1983 AMENDMENT

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

#### EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97-123 applicable to remuneration paid after Dec. 31, 1981, except as otherwise pro-

vided, see section 3(g) of Pub. L. 97-123, set out as a note under section 3121 of this title.

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

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-547, § 4(c)(2), Oct. 18, 1976, 90 Stat. 2527, provided that: “The amendments made by subsection (b) of this section [amending this section] shall apply with respect to taxable years ending after December 31, 1953: *Provided, however,* That any taxes paid under the Railroad Retirement Tax Act [this chapter] prior to the date on which this Act is enacted [Oct. 18, 1976] shall not be affected or adjusted by reason of the amendments made by such subsection (b) except to the extent that the applicable period of limitation for the assessment of tax and the filing of a claim for credit or refund has not expired prior to the date on which this Act is enacted. If the applicable period of limitation for the filing of a claim for credit or refund would expire within the six-month period following the date on which this Act is enacted, the applicable period for the filing of such a claim for credit or refund shall be extended to include such six-month period.”

#### EFFECTIVE DATE OF 1975 AMENDMENTS

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

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

#### EFFECTIVE DATE OF 1968 AMENDMENT

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

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

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

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

#### EFFECTIVE DATE OF 1965 AMENDMENT

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

#### EFFECTIVE DATE OF 1954 AMENDMENT

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

#### REGULATIONS

For provisions requiring that the regulations prescribed under subsec. (e)(4) of this section prescribe procedures under which, if (with respect to any employee) the third party promptly (A) withholds the employee portion of the taxes involved, (B) deposits such portion under section 6302 of such Code, and (C) notifies the employer of the amount of the wages or compensation involved, the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of this title (relating to receipts for employees) with respect to the wages or compensation involved, see section 3(d) of Pub. L. 97-123, set out as a note under section 3121 of this title.

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

For purposes of this chapter, the term “compensation” shall not include the amount of any refund required under section 421 of Pub. L. 100-360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101-239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

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

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

### § 3232. Court jurisdiction

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

(Aug. 16, 1954, ch. 736, 68A Stat. 437; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

### § 3233. Short title

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



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

### Subchapter E—Tier 2 Tax Rate Determination

Sec.

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

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

##### (a) In general

For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

##### (b) Tax rate schedule

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

##### (c) Definitions related to determination of rates of tax

###### (1) Average account benefits ratio

For purposes of this section, the term “average account benefits ratio” means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

###### (2) Account benefits ratio

For purposes of this section, the term “account benefits ratio” means, with respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year.

##### (d) Notice

No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.

(Added Pub. L. 107-90, title II, § 204(d), Dec. 21, 2001, 115 Stat. 892.)

#### EFFECTIVE DATE

Subchapter applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

### CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

Sec.

3301. Rate of tax.  
3302. Credits against tax.  
3303. Conditions of additional credit allowance.  
3304. Approval of State laws.  
3305. Applicability of State law.  
3306. Definitions.  
3307. Deductions as constructive payments.  
3308. Instrumentalities of the United States.  
3309. State law coverage of services performed for nonprofit organizations or governmental entities.  
3310. Judicial review.  
3311. Short title.

#### AMENDMENTS

1976—Pub. L. 94-566, title I, § 115(c)(4), Oct. 20, 1976, 90 Stat. 2671, substituted “services performed for nonprofit organizations or governmental entities” for “certain services performed for nonprofit organizations and for State hospitals and institutions of higher education” in item 3309.

1970—Pub. L. 91-373, title I, §§ 104(b)(2), 131(b)(3), Aug. 10, 1970, 84 Stat. 699, 705, added items 3309 and 3310 and redesignated former item 3309 as 3311.

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 each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent in the case of calendar years 1988 through 2010 and the first 6 months of calendar year 2011; or

(2) 6.0 percent in the case of the remainder of calendar year 2011 and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year (or portion of the calendar year) with respect to employment (as defined in section 3306(c)).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86-778, title V, § 523(a), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87-6, § 14(a), Mar. 24, 1961, 75 Stat. 16; Pub. L. 88-31, § 2(a), May 29, 1963, 77 Stat. 51; Pub. L. 91-373, title III, § 301(a), Aug. 10, 1970, 84 Stat. 713; Pub. L. 92-329, § 2(a), June 30, 1972, 86 Stat. 398; Pub. L. 94-455, title XIX, § 1903(a)(11), Oct. 4, 1976, 90 Stat. 1808; Pub. L. 94-566, title II, § 211(b), Oct. 20, 1976, 90 Stat. 2676; Pub. L. 97-248, title II, § 271(b)(1), (c)(1), Sept. 3, 1982, 96 Stat. 554, 555; Pub. L. 99-514, title XVIII, § 1899A(42), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 100-203, title IX, § 9153(a), Dec. 22, 1987, 101 Stat. 1330-326; Pub. L. 101-508, title XI, § 11333(a), Nov. 5, 1990, 104 Stat. 1388-470; Pub. L. 102-164, title IV, § 402, Nov. 15, 1991, 105 Stat. 1061; Pub. L. 103-66, title XIII, § 13751, Aug. 10, 1993, 107 Stat. 664; Pub. L. 105-34, title X, § 1035, Aug. 5, 1997, 111 Stat. 937; Pub. L. 110-140, title XV, § 1501(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110-343, div. B, title IV, § 404(a), Oct.

3, 2008, 122 Stat. 3860; Pub. L. 111-92, §10(a), Nov. 6, 2009, 123 Stat. 2988.)

#### AMENDMENTS

2009—Pub. L. 111-92 inserted “(or portion of the calendar year)” after “during the calendar year” in concluding provisions and substituted “through 2010 and the first 6 months of calendar year 2011” for “through 2009” in par. (1) and “the remainder of calendar year 2011” for “calendar year 2010” in par. (2).

2008—Par. (1). Pub. L. 110-343, §404(a)(1), substituted “through 2009” for “through 2008”.

Par. (2). Pub. L. 110-343, §404(a)(2), substituted “calendar year 2010” for “calendar year 2009”.

2007—Par. (1). Pub. L. 110-140, §1501(a)(1), substituted “2008” for “2007”.

Par. (2). Pub. L. 110-140, §1501(a)(2), substituted “2009” for “2008”.

1997—Par. (1). Pub. L. 105-34, §1035(1), substituted “2007” for “1998”.

Par. (2). Pub. L. 105-34, §1035(2), substituted “2008” for “1999”.

1993—Par. (1). Pub. L. 103-66, §13751(1), substituted “1998” for “1996”.

Par. (2). Pub. L. 103-66, §13751(2), substituted “1999” for “1997”.

1991—Par. (1). Pub. L. 102-164, §402(1), substituted “1996” for “1995”.

Par. (2). Pub. L. 102-164, §402(2), substituted “1997” for “1996”.

1990—Par. (1). Pub. L. 101-508, §11333(a)(1), substituted “1988 through 1995” for “1988, 1989, and 1990”.

Par. (2). Pub. L. 101-508, §11333(a)(2), substituted “1996” for “1991”.

1987—Pars. (1), (2). Pub. L. 100-203 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) 6.2 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act); or

“(2) 6.0 percent, in the case of such first calendar year and each calendar year thereafter;”.

1986—Par. (1). Pub. L. 99-514 substituted “unemployment” for “unemployed”.

1982—Par. (1). Pub. L. 97-248, §271(c)(1)(A), substituted “6.2 percent” for “3.5 percent”.

Pub. L. 97-248, §271(b)(1), substituted “3.5 percent” for “3.4 percent”.

Par. (2). Pub. L. 97-248, §271(c)(1)(B), substituted “6.0 percent” for “3.2 percent”.

1976—Pub. L. 94-566 substituted provisions imposing an excise tax equal to 3.4 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed compensation account (established by section 905(a) of the Social Security Act), or 3.2 percent, in the case of such first calendar year and each calendar year thereafter, 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)), for provisions imposing an excise tax for the calendar year 1970 and each calendar year thereafter, with respect to having individuals in his employ, equal to 3.2 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)) and provisions that, in the case of wages paid during the calendar year 1973, the rate of such tax should be 3.28 percent in lieu of 3.2 percent.

Pub. L. 94-455 substituted “each calendar year” for “the calendar year 1970 and each calendar year thereafter” and struck out provisions relating to the rate of tax in the case of wages paid during the calendar year 1973.

1972—Pub. L. 92-329 inserted provisions setting forth the rate of tax in the case of wages paid during the calendar year 1973.

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

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

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

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

#### EFFECTIVE DATE OF 2009 AMENDMENT

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

#### EFFECTIVE DATE OF 2008 AMENDMENT

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

#### EFFECTIVE DATE OF 2007 AMENDMENT

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

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

#### EFFECTIVE DATE OF 1990 AMENDMENT

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

#### EFFECTIVE DATE OF 1987 AMENDMENT

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

#### EFFECTIVE DATE OF 1982 AMENDMENT

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

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

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

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

#### EFFECTIVE DATE OF 1970 AMENDMENT

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

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-778, title V, §523(c), Sept. 13, 1960, 74 Stat. 982, provided that: “The amendments made by subsection (a) [amending this section] shall apply only with respect to the calendar year 1961 and calendar years thereafter.”

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 3302. Credits against tax

#### (a) Contributions to State unemployment funds

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

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

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

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

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

#### (b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the con-

tributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

#### (c) Limit on total credits

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

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

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

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

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

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

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

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

- (i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds
- (ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974. Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.

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

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

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

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

**(d) Definitions and special rules relating to subsection (c)**

**(1) Rate of tax deemed to be 6 percent**

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

**(2) Wages attributable to a particular State**

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

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

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

**(4) Average employer contribution rate**

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

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

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

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

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

**(5) 5-year benefit cost rate**

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

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

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

**(6) Rounding**

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

**(7) Determination and certification of percentages**

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

**(e) Successor employer**

Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

**(f) Limitation on credit reduction****(1) Limitation**

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

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

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

**(2) Requirements**

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

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

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

(C) the State unemployment tax rate for the taxable year equals or exceeds the aver-

age benefit cost ratio for calendar years in the 5-calendar year period ending with the last calendar year before the taxable year, and

(D) the outstanding balance for such State of advances under title XII of the Social Security Act on September 30 of such taxable year was not greater than the outstanding balance for such State of such advances on September 30 of the third preceding taxable year (or, for purposes of applying this subparagraph to taxable year 1983, September 30, 1981).

The requirements of subparagraphs (C) and (D) shall not apply to taxable years 1981 and 1982.

**(3) Credit reductions for subsequent years**

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

**(4) State unemployment tax rate**

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

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

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

**(5) Benefit cost ratio**

For purposes of this subsection—

**(A) In general**

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

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

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

**(B) Reimbursable benefits not taken into account**

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

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

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

**(C) Reimbursing employer**

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

**(D) Rounding**

If any percentage determined under subparagraph (A) is not a multiple of .1 percent, such percentage shall be reduced to the nearest multiple of .1 percent.

**(6) Reports**

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

**(7) Definitions and special rules**

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

**(8) Partial limitation**

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

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

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

**(g) Credit reduction not to apply when State makes certain repayments****(1) In general**

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

**(2) Requirements**

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

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

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

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

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

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

**(3) Definitions**

For purposes of paragraph (2)—

**(A) Potential additional taxes**

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

**(B) Treatment of certain reductions**

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

**(4) Reports**

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

**(h) Treatment of certified professional employer organizations**

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

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

L. 91-373, title I, §142(a), (b), Aug. 10, 1970, 84 Stat. 707; Pub. L. 93-618, title II, §239(e), Jan. 3, 1975, 88 Stat. 2025; Pub. L. 94-45, title I, §110(a), title III, §302, June 30, 1975, 89 Stat. 239, 243; Pub. L. 94-455, title XIX, §§1903(a)(12), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 95-19, title II, §201(a), Apr. 12, 1977, 91 Stat. 43; Pub. L. 96-589, §6(f), Dec. 24, 1980, 94 Stat. 3409; Pub. L. 97-35, title XXIV, §2406(a), Aug. 13, 1981, 95 Stat. 876; Pub. L. 97-248, title II, §§271(c)(2), (3)(A), (B), 272(a), 273(a), Sept. 3, 1982, 96 Stat. 555-557; Pub. L. 98-21, title V, §§512(a)(1), (b), 513(a)-(c), Apr. 20, 1983, 97 Stat. 146, 147; Pub. L. 99-514, title XVIII, §1884(1), (2), Oct. 22, 1986, 100 Stat. 2919; Pub. L. 113-295, div. A, title II, §221(a)(101), div. B, title II, §206(c)(1), Dec. 19, 2014, 128 Stat. 4052, 4070.)

## REFERENCES IN TEXT

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

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

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

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

## AMENDMENTS

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

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

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

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

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

1983—Subsec. (c)(2)(B). Pub. L. 98-21, §513(c), inserted “, multiplied by a fraction, the numerator of which is the State’s average annual wage in covered employment for the calendar year in which the determination is made and the determination of which is the wage base under this chapter,” in provisions preceding cl. (i).

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

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

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

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

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

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

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

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

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

1980—Subsec. (a)(5). Pub. L. 96-589 added par. (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### EFFECTIVE DATE OF 2014 AMENDMENT

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

Amendment by section 221(a)(101) of Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

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

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

#### EFFECTIVE DATE OF 1982 AMENDMENT

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

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

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

#### EFFECTIVE DATE OF 1981 AMENDMENT

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

#### EFFECTIVE DATE OF 1980 AMENDMENT

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

#### EFFECTIVE DATE OF 1970 AMENDMENT

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

#### EFFECTIVE DATE OF 1963 AMENDMENT

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

#### EFFECTIVE DATE OF 1961 AMENDMENT

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

#### CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### TRANSITIONAL RULE FOR CERTAIN EMPLOYEES AND SMALL BUSINESSES

Pub. L. 97-248, title II, §271(d)(3), (4), formerly §271(b)(3), Sept. 3, 1982, 96 Stat. 555, as redesignated and



amended by Pub. L. 98-601, §1(a), Oct. 30, 1984, 98 Stat. 3147; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(3) TRANSITIONAL RULE FOR CERTAIN EMPLOYEES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(i) 3.1 percent, plus

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

“(D) QUALIFIED SMALL BUSINESS PROVISION.—For purposes of this paragraph, the term ‘qualified small business provision’ means a provision contained in a State unemployment compensation law (as in effect on the date of the enactment of this paragraph [Oct.

30, 1984]) which provides a maximum rate at which an employer is subject to contribution for wages paid during a calendar quarter if the total wages paid by such employer during such calendar quarter are less than \$50,000.

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

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

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

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

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

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

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

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

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

### § 3303. Conditions of additional credit allowance

#### (a) State standards

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

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ ex-

cept on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

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

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

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

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

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

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

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

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

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

(4) if the taxpayer is a certified professional employer organization (as defined in section 7705) that is treated as the employer under section 3511, such certified professional employer organization is permitted to collect and remit, in accordance with paragraphs (1), (2), and (3), contributions during the taxable year to the State unemployment fund with respect to a work site employee.

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), (3), and (4) of this subsection on a 3-year basis (i) 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, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), (3), or (4).

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

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary

of the Treasury the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period 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 12-month period ending on October 31, 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 such October 31, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such 12-month period 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 the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 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 12-month period, 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 ac-

count, 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.

**(e) Payments by certain nonprofit organizations**

A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

**(f) Prohibition on noncharging due to employer fault****(1) In general**

A State law shall be treated as meeting the requirements of subsection (a)(1) only if such law provides that an employer's account shall not be relieved of charges relating to a payment from the State unemployment fund if the State agency determines that—

(A) the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation; and

(B) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

**(2) State authority to impose stricter standards**

Nothing in paragraph (1) shall limit the authority of a State to provide that an employer's account not be relieved of charges relating to a payment from the State unemployment fund for reasons other than the reasons described in subparagraphs (A) and (B) of such paragraph, such as after the first instance of a

failure to respond timely or adequately to requests described in paragraph (1)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 440; Sept. 1, 1954, ch. 1212, § 2, 68 Stat. 1130; Pub. L. 91-373, title I, §§ 104(c), 122(a), 142(c)-(e), Aug. 10, 1970, 84 Stat. 699, 702, 707; Pub. L. 94-455, title XIX, §§ 1903(a)(13), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 94-566, title I, § 122(a), (b), Oct. 20, 1976, 90 Stat. 2675, 2676; Pub. L. 112-40, title II, § 252(a), Oct. 21, 2011, 125 Stat. 421; Pub. L. 113-295, div. B, title II, § 206(c)(2), Dec. 19, 2014, 128 Stat. 4070.)

#### AMENDMENTS

2014—Subsec. (a). Pub. L. 113-295, § 206(c)(2)(B), substituted “paragraphs (1), (2), (3), and (4)” for “paragraphs (1), (2), and (3)” and “paragraph (1), (2), (3), or (4)” for “paragraph (1), (2), or (3)” in concluding provisions.

Subsec. (a)(4). Pub. L. 113-295, § 206(c)(2)(A), added par. (4).

2011—Subsecs. (f), (g). Pub. L. 112-40 added subsec. (f) and struck out former subsecs. (f) and (g) which contained transitional provisions enacted by prior amendments.

1976—Subsec. (b)(1) to (3). Pub. L. 94-455 substituted reference to Secretary of the Treasury for reference to Secretary and reference to 12-month period for reference to 12 or 10-month period, as the case may be, and struck out reference to (10-month period in the case of Oct. 31, 1972) following provisions relating to 12-month period ending Oct. 31.

Subsec. (f). Pub. L. 94-566, § 122(b), substituted “which elects before April 1, 1972,” for “which elects, when such election first becomes available under the State law.”

Subsec. (g). Pub. L. 94-566, § 122(a), added subsec. (g).

1970—Subsec. (a). Pub. L. 91-373, § 122(a), added to provision following par. (3) the authorization for the allowance of a reduced rate by State law (but not less than 1 percent) on a reasonable basis other than as permitted by par. (1), (2), or (3).

Subsec. (b). Pub. L. 91-373, § 142(c)-(e), changed the certification date referred to in pars. (1) to (3) from Dec. 31 to Oct. 31, with provision for a 10-month period in the case of Oct. 31, 1972, and, except for Oct. 31, 1972, provided for a 12-month period ending on Oct. 31 each year.

Subsecs. (e), (f). Pub. L. 91-373, § 104(c), added subsecs. (e) and (f).

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

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable with respect to wages for services performed on or after January 1 of the first calendar year beginning more than 12 months after Dec. 19, 2014, see section 206(g)(1) of Pub. L. 113-295, set out as a note under section 3302 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-40, title II, § 252(b), Oct. 21, 2011, 125 Stat. 422, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to erroneous payments established after the end of the 2-year period beginning on the date of the enactment of this Act [Oct. 21, 2011].

“(2) AUTHORITY.—A State may amend its State law to apply such amendments to erroneous payments established prior to the end of the period described in paragraph (1).”

#### EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94-566, title I, § 122(c), Oct. 20, 1976, 90 Stat. 2676, provided that: “The amendment made by sub-

section (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976]. The amendment made by subsection (b) [amending this section] shall take effect on January 1, 1970.”

Amendment by section 1903(a)(13) of Pub. L. 94-455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 104(c) of Pub. L. 91-373 [amending this section] to take effect Jan. 1, 1970, see section 104(d)(1) of Pub. L. 91-373, set out as a note under section 3304 of this title.

Pub. L. 91-373, title I, § 122(b), Aug. 10, 1970, 84 Stat. 702, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971.”

Amendment by section 142(c)-(e) of Pub. L. 91-373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91-373, set out as a note under section 3302 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, § 2, 68 Stat. 1130, provided that the amendment made by that section is effective after Dec. 31, 1954.

#### TREATMENT OF CERTAIN CHARITABLE ORGANIZATIONS RETROACTIVELY DETERMINED TO BE DESCRIBED IN SECTION 501(c)(3) OF THIS TITLE

Pub. L. 98-21, title V, § 524, Apr. 20, 1983, 97 Stat. 149, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If—

“(1) an organization did not make an election to make payments (in lieu of contributions) as provided in section 3309(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before April 1, 1972, because such organization, as of such date, was treated as an organization described in section 501(c)(4) of such Code,

“(2) the Internal Revenue Service subsequently determined that such organization was described in section 501(c)(3) of such Code, and

“(3) such organization made such an election before the earlier of—

“(A) the date 18 months after such election was first available to it under the State law, or

“(B) January 1, 1984,

then [former] section 3303(f) of such Code shall be applied with respect to such organization as if it did not contain the requirement that the election be made before April 1, 1972, and by substituting ‘January 1, 1982’ for ‘January 1, 1969’.”

### § 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 of the Treasury to the credit of the Unemployment

Trust Fund established by section 904 of the Social Security Act (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, 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—

(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;

(B) the amounts specified by section 903(c)(2) or 903(d)(4) 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;

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(D) amounts shall be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)); and

(G) with respect to amounts of covered unemployment compensation debt (as defined in section 6402(f)(4)) collected under section 6402(f)—

(i) amounts may be deducted to pay any fees authorized under such section; and

(ii) the penalties and interest described in section 6402(f)(4)(B)<sup>1</sup> may be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State;

(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 com-

pany union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess,

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution

<sup>1</sup> See References in Text note below.

while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions,

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

(vi) with respect to services described in clause (ii), clauses (iii) and (iv) shall be applied by substituting "may be denied" for "shall be denied", and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence;

(15)(A) subject to subparagraph (B), the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that—

(i) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(I) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(II) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the

base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(ii) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, and

(B) the amount of compensation shall not be reduced on account of any payments of governmental or other pensions, retirement or retired pay, annuity, or other similar payments which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health and Human Services in regulations) for purposes of determining an individual's eligibility for assistance, or the amount of such assistance, under a State program funded under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes,

(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the National Directory of New Hires established under section 453(i) of the Social Security Act, and

(C) such safeguards are established as are necessary (as determined by the Secretary of Health and Human Services in regulations) to insure that information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund;

(18) Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding; and

(19) 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 October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury 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 the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as required under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

#### **(d) Notice of noncertification**

If at any time 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.

#### **(e) Change of law during 12-month period**

Whenever—

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

#### **(f) Definition of institution of higher education**

For purposes of subsection (a)(6), the term "institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gain-

ful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(Aug. 16, 1954, ch. 736, 68A Stat. 443; Pub. L. 91-373, title I, §§104(a), 108(a), 121(a), 131(b)(2), 142(f)-(h), title II, §206, Aug. 10, 1970, 84 Stat. 697, 701, 704, 707, 708, 712; Pub. L. 94-455, title XIX, §§1903(a)(14), 1906(b)(13)(C), (E), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 94-566, title I, §115(c)(1), (5), title III, §§312(a), (b), 314(a), title V, §506(b), Oct. 20, 1976, 90 Stat. 2670, 2671, 2679, 2680, 2687; Pub. L. 95-19, title III, §302(a), (c), (e), Apr. 12, 1977, 91 Stat. 44, 45; Pub. L. 95-171, §2(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95-216, title IV, §403(b), Dec. 20, 1977, 91 Stat. 1561; Pub. L. 96-364, title IV, §414(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 97-35, title XXIV, §2408(a), Aug. 13, 1981, 95 Stat. 880; Pub. L. 97-248, title I, §193(a), Sept. 3, 1982, 96 Stat. 408; Pub. L. 98-21, title V, §§515(b), 521(a), 523(a), Apr. 20, 1983, 97 Stat. 147, 148; Pub. L. 99-272, title XII, §12401(b)(1), Apr. 7, 1986, 100 Stat. 297; Pub. L. 99-514, title XVIII, §1899A(43), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101-649, title I, §162(e)(4), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 102-164, title III, §302(a), Nov. 15, 1991, 105 Stat. 1059; Pub. L. 102-318, title IV, §401(a)(1), July 3, 1992, 106 Stat. 298; Pub. L. 103-182, title V, §507(b)(1), Dec. 8, 1993, 107 Stat. 2154; Pub. L. 103-465, title VII, §702(b), (c)(1), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104-193, title I, §110(l)(1), formerly §110(l)(2), title III, §316(g)(2), Aug. 22, 1996, 110 Stat. 2173, 2218, renumbered Pub. L. 105-33, title V, §5514(a)(2), Aug. 5, 1997, 111 Stat. 620; Pub. L. 107-147, title II, §209(d)(1), Mar. 9, 2002, 116 Stat. 33; Pub. L. 109-280, title XI, §1105(a), Aug. 17, 2006, 120 Stat. 1060; Pub. L. 110-328, §3(c), Sept. 30, 2008, 122 Stat. 3572; Pub. L. 110-458, title I, §111(b), Dec. 23, 2008, 122 Stat. 5113; Pub. L. 112-96, title II, §§2103(a), 2161(b)(1)(A), Feb. 22, 2012, 126 Stat. 161, 172.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(4)(B), (D), (15)(A)(i)(II), (16)(A), (B), (17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare, Part A of title IV and title XII of the Act are classified generally to part A (§601 et seq.) of subchapter IV and subchapter XII (§1321 et seq.), respectively, of chapter 7 of Title 42. Sections 303(g), 453(i), and 903(c)(2), (d)(4) of the Act are classified to sections 503(g), 653(i), and 1103(c)(2), (d)(4), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1305 of Title 42 and Tables.

Section 6402(f)(4)(B), referred to in subsec. (a)(4)(G)(ii), does not relate to penalties and interest. Provisions relating to penalties and interest are found elsewhere in section 6402(f).

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (a)(11) and (c), is Pub. L. 91-373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note below.

Section 212(d)(5) of the Immigration and Nationality Act, referred to in subsec. (a)(14)(A), is classified to section 1182(d)(5) of Title 8, Aliens and Nationality.

The Railroad Retirement Act of 1974, referred to in subsec. (a)(15)(A)(i)(II), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

#### AMENDMENTS

2012—Subsec. (a)(4)(D). Pub. L. 112-96, §2103(a), substituted “shall” for “may”.

Subsec. (a)(4)(E). Pub. L. 112-96, §2161(b)(1)(A), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor;”.

2008—Subsec. (a). Pub. L. 110-458, §111(b)(2), struck out concluding provisions which read as follows: “Compensation shall not be reduced under paragraph (15) for any pension, retirement or retired pay, annuity, or similar payment which is not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution.”

Subsec. (a)(4)(G). Pub. L. 110-328 added subpar. (G).

Subsec. (a)(15). Pub. L. 110-458, §111(b)(1), inserted “(A) subject to subparagraph (B),” after par. designation, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), substituted “, and” for semicolon at end of cl. (ii), and added subpar. (B).

2006—Subsec. (a). Pub. L. 109-280 added concluding provisions.

2002—Subsec. (a)(4)(B). Pub. L. 107-147 inserted “or 903(d)(4)” before “of the Social Security Act”.

1996—Subsec. (a)(16)(A). Pub. L. 104-193, §316(g)(2)(C), struck out “and” at end.

Pub. L. 104-193, §316(g)(2)(A), substituted “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare”.

Pub. L. 104-193, §110(l)(1), formerly §110(l)(2), as renumbered by Pub. L. 105-33, substituted “eligibility for assistance, or the amount of such assistance, under a State program funded” for “eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved”.

Subsec. (a)(16)(B). Pub. L. 104-193, §316(g)(2)(E), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 104-193, §316(g)(2)(B), substituted “information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;” for “such information is used only for the purposes authorized under subparagraph (A);”.

Pub. L. 104-193, §316(g)(2)(A), substituted “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare”.

Subsec. (a)(16)(C). Pub. L. 104-193, §316(g)(2)(D), redesignated subpar. (B) as (C).

1994—Subsec. (a)(4)(C). Pub. L. 103-465, §702(c)(1), inserted “, or the withholding of Federal, State, or local individual income tax,” after “health insurance”.

Subsec. (a)(17) to (19). Pub. L. 103-465, §702(b), struck out “and” at end of par. (17), added par. (18), and redesignated former par. (18) as (19).

1993—Subsec. (a)(4)(F). Pub. L. 103-182 added subpar. (F).

1992—Subsec. (a)(4)(E). Pub. L. 102-318 added subpar. (E).

1991—Subsec. (a)(6)(A)(ii)(I). Pub. L. 102-164, §302(a)(1), substituted “may be denied” for “shall be denied”.

Subsec. (a)(6)(A)(iii), (iv). Pub. L. 102-164, §302(a)(2), which directed that “and” be struck out at end of cls. (iii) and (iv), could be executed only to cl. (iv) because “and” did not appear at end of cl. (iii).

Subsec. (a)(6)(A)(vi). Pub. L. 102-164, §302(a)(2), added cl. (vi).

1990—Subsec. (a)(14)(A). Pub. L. 101-649 struck out reference to section 203(a)(7) of Immigration and Nationality Act.

1986—Subsec. (a)(4)(D). Pub. L. 99-272 added subpar. (D).

Subsec. (a)(6)(A)(iii). Pub. L. 99-514 struck out “and” at end.

1983—Subsec. (a)(4)(C). Pub. L. 98-21, §523(a), added subpar. (C).

Subsec. (a)(6)(A)(ii)(I), (iii), (iv). Pub. L. 98-21, §521(a)(2), substituted “shall be denied” for “may be denied”.



Subsec. (a)(6)(A)(v). Pub. L. 98-21, § 521(a)(1), added cl. (v).

Subsec. (a)(17), (18). Pub. L. 98-21, § 515(b), added par. (17) and redesignated former par. (17) as (18).

1982—Subsec. (a)(6)(A)(ii). Pub. L. 97-248 redesignated existing provisions as provisions preceding subcl. (I) and subcl. (I), and in such provisions as so redesignated, struck out “(other than an institution of higher education)” after “capacity for an educational institution”, substituted “2” for “two”, and inserted “except that” at end of subcl. (I), and added subcl. (II).

1981—Subsec. (c). Pub. L. 97-35 substituted provisions relating to limitations on certification on Oct. 31 of any taxable year, for provisions relating to limitations on certification on Oct. 31 of any taxable year after 1971, and on Oct. 31 of any taxable year after 1977.

1980—Subsec. (a)(15). Pub. L. 96-364 inserted provisions relating to applicability to any pension, retirement or retired pay, annuity, or other similar periodic payment.

1977—Subsec. (a)(6)(A)(i). Pub. L. 95-19, § 302(c)(1), (2), inserted a comma between “instructional” and “research”, substituted “two successive academic years or terms” for “two successive academic years”, and struck out “and” after “the second of such academic years or terms.”

Subsec. (a)(6)(A)(iii). Pub. L. 95-19, § 302(c)(3), added cl. (iii).

Subsec. (a)(6)(A)(iv). Pub. L. 95-171 added cl. (iv).

Subsec. (a)(14)(A). Pub. L. 95-19, § 302(a), substituted “who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was)” for “who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is)”.

Subsec. (a)(15). Pub. L. 95-19, § 302(e), substituted “March 31, 1980” for “September 30, 1979”.

Subsec. (a)(16), (17). Pub. L. 95-216 added par. (16). Former par. (16) redesignated (17).

1976—Subsec. (a)(3). Pub. L. 94-455, §§ 1903(a)(14)(A), 1906(b)(13)(C), inserted “of the Treasury” after “to the Secretary” and struck out “49 Stat. 640; 52 Stat. 1104, 1105;” before “42 U.S.C. 1104”.

Subsec. (a)(6)(A). Pub. L. 94-566, § 115(c)(1), designated existing provisions as cl. (i), added cl. (ii), and in cl. (i) as so designated substituted “educational institution” for “institution of higher education”, “an agreement provides” for “the contract provides”, and “if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and” for “who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and”.

Subsec. (a)(6)(B). Pub. L. 94-566, § 506(b), substituted “section 3309(a)(1)” for “section 3309(a)(1)(A)”.

Subsec. (a)(12). Pub. L. 94-566, § 312(a), substituted provisions that no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy for provisions that each political subdivision of the State should have the right to elect to have compensation payable to employees thereof (whose services were not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision did elect to have compensation payable to such employees thereof (A) the political subdivision elected should pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees would be entitled to receive, on the basis of such service, com-

pensation payable on the same conditions as compensation which was payable on the basis of similar service for the State which was subject to such law.

Subsec. (a)(13) to (16). Pub. L. 94-566, § 314(a), added pars. (13) to (15) and redesignated former par. (13) as (16).

Subsec. (c). Pub. L. 94-566, § 312(b), provided that on Oct. 31 of any taxable year after 1977, the Secretary shall not certify any State which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, or has with respect to the 12-month period ending on such Oct. 31, failed to comply substantially with any such provision.

Pub. L. 94-455, §§ 1903(a)(14)(B), 1906(b)(13)(C), (E), inserted “of the Treasury” after “certify to the Secretary”, substituted “the Secretary of Labor shall” for “the Secretary shall” and struck out “(10-month period in the case of October 31, 1972)” after “to the 12-month period”.

Subsec. (f). Pub. L. 94-566, § 115(c)(5), added subsec. (f). 1970—Subsec. (a)(6) to (13). Pub. L. 91-373, §§ 104(a), 108(a), 121(a), 206, added pars. (6) to (12) and redesignated former par. (6) as (13).

Subsec. (c). Pub. L. 91-373, § 131(b)(2), clarified provisions governing procedure to be followed with respect to a finding of the Secretary of Labor that a state has failed to comply substantially with any of the provisions of subsec. (a)(5).

Pub. L. 91-373, § 142(f), substituted “October 31” for “December 31” as certification date and “12-month period ending on such October 31” for “taxable year” and prohibited certifications for failure to amend State laws to contain provisions required by reason of enactment of the Employment Security Amendments of 1970.

Subsec. (d). Pub. L. 91-373, § 142(g), substituted “If at any time” for “If, at any time during the taxable year,”.

Subsec. (e). Pub. L. 91-373, § 142(h), added subsec. (e).

#### EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-96, title II, § 2103(c), Feb. 22, 2012, 126 Stat. 161, provided that: “The amendments made by this section [amending this section and section 503 of Title 42, The Public Health and Welfare] shall apply to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act [Feb. 22, 2012].”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

Pub. L. 110-328, § 3(e), Sept. 30, 2008, 122 Stat. 3573, provided that: “The amendments made by this section [amending this section and sections 6103 and 6402 of this title] shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of enactment of this Act [Sept. 30, 2008].”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XI, § 1105(b), Aug. 17, 2006, 120 Stat. 1060, provided that: “The amendment made by this section [amending this section] shall apply to weeks beginning on or after the date of the enactment of this Act [Aug. 17, 2006].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 110(l)(1) of Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and

continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 316(g)(2) of Pub. L. 104-193, see section 395(a)-(c) of Pub. L. 104-193, set out as a note under section 654 of Title 42.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, § 702(d), Dec. 8, 1994, 108 Stat. 4997, provided that: "The amendments made by this section [amending this section, sections 3306 and 3402 of this title, and section 503 of Title 42, The Public Health and Welfare] shall apply to payments made after December 31, 1996."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-164, title III, § 302(b), Nov. 15, 1991, 105 Stat. 1059, provided that: "The amendments made by this section [amending this section] section shall apply in the case of compensation paid for weeks beginning on or after the date of the enactment of this Act [Nov. 15, 1991]."

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101-649, set out as a note under section 1101 of Title 8, Aliens and Nationality.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to recoveries made on or after Apr. 7, 1986, and applicable with respect to overpayments made before, on, or after such date, see section 12401(c) of Pub. L. 99-272, set out as a note under section 503 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-21, title V, § 521(b), Apr. 20, 1983, 97 Stat. 147, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply in the case of compensation paid for weeks beginning on or after April 1, 1984.

"(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Apr. 20, 1983], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

Pub. L. 98-21, title V, § 523(c), Apr. 20, 1983, 97 Stat. 149, provided that: "The amendments made by this section [amending this section and section 503 of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Apr. 20, 1983]."

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title I, § 193(b), Sept. 3, 1982, 96 Stat. 409, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to weeks of unemployment beginning after the date of the enactment of this Act [Sept. 3, 1982].

"(2) The amendment made by subsection (a) [amending this section], insofar as it requires retroactive payments of compensation to employees of educational in-

stitutions other than institutions of higher education (as defined in section 3304(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), shall not be a requirement for any State law before January 1, 1984."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-364, title IV, § 414(b), Sept. 26, 1980, 94 Stat. 1310, provided that: "The amendment made by subsection (a) [amending this section] shall apply to certifications of States for 1981 and subsequent years."

#### EFFECTIVE DATE OF 1977 AMENDMENTS

Pub. L. 95-216, title IV, § 403(d), Dec. 20, 1977, 91 Stat. 1562, provided that: "The amendments made by this section [enacting section 611 of Title 42, The Public Health and Welfare, and amending this section and section 602 of Title 42] shall be effective on the date of the enactment of this Act [Dec. 20, 1977]."

Pub. L. 95-171, § 2(b), Nov. 12, 1977, 91 Stat. 1353, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to weeks of unemployment which begin after December 31, 1977."

Pub. L. 95-19, title III, § 302(d)(1), Apr. 12, 1977, 91 Stat. 45, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 314 of the Unemployment Compensation Amendments of 1976."

Pub. L. 95-19, title III, § 302(d)(3), Apr. 12, 1977, 91 Stat. 45, provided that: "The amendments made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 115(c) of the Unemployment Compensation Amendments of 1976."

#### EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94-566, title I, § 115(d), Oct. 20, 1976, 90 Stat. 2671, as amended by Pub. L. 95-19, title III, § 301(a), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to certifications of States for 1978 and subsequent years; except that—

"(A) the amendments made by subsections (a) and (b) [amending section 3309 of this title] shall only apply with respect to services performed after December 31, 1977; and

"(B) the amendments made by subsection (c) [amending this section and section 3309 of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by subsection (c) [amending this section and section 3309 of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1978 (or if earlier, the date provided by State law)."

Pub. L. 94-566, title I, § 116(f), Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"EFFECTIVE DATES.—

"(1) SUBSECTIONS (a), (c) AND (d).—The amendments made by subsections (a), (c), and (d) [amending sections 202 and 205 of Pub. L. 91-373 and section 102 of Pub. L. 93-57 set out below, section 49d of Title 29, Labor, and section 1301 of Title 42, The Public Health and Welfare] shall take effect on the later of October 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] an unemployment compensation law submitted to him by the Virgin Islands for approval.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 3306 of this title] shall apply with respect to remuneration paid after December 31 of the year in which the Secretary of Labor approves for the first time an unemployment

compensation law submitted to him by the Virgin Islands for approval, for services performed after such December 31.

“(3) SUBSECTION (e).—The amendments made by subsection (e) [amending sections 8501, 8503, 8504, 8521, and 8522 of Title 5, Government Organization and Employees] shall apply with respect to benefit years beginning on or after the later of October 1, 1976, or the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304(a) of the Internal Revenue Code of 1986.”

Pub. L. 94-566, title III, §312(c), Oct. 20, 1976, 90 Stat. 2679, as amended by Pub. L. 95-19, title III, §301(b), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to certifications of States for 1978 and subsequent years.

“(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending this section] shall apply with respect to the certification of such State for 1979 and subsequent years.”

Pub. L. 94-566, title III, §314(b), Oct. 20, 1976, 90 Stat. 2680, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to certifications of States for 1978 and subsequent years, or for 1979 and subsequent years in the case of States the legislatures of which do not meet in a regular session which closes in the calendar year 1977.”

Pub. L. 94-566, title V, §506(c), Oct. 20, 1976, 90 Stat. 2687, as amended by Pub. L. 95-19, title III, §301(c), Apr. 12, 1977, 91 Stat. 44, effective Oct. 20, 1976, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977.

“(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to the certification of such State for 1979 and subsequent years, but only with respect to services performed after December 31, 1978.”

[Pub. L. 95-19, title III, §301(d), Apr. 12, 1977, 91 Stat. 44, provided that: “The amendments made by this section [amending this Effective Date of 1976 Amendment note in three places] shall take effect on October 20, 1976.”]

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-373, title I, §104(d), Aug. 10, 1970, 84 Stat. 699, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subject to the provisions of paragraph (2), the amendments made by subsections (a) and (b) [amending this section and enacting section 3309 of this title] shall apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971. The amendment made by subsection (c) [amending section 3303 of this title] shall take effect January 1, 1970.

“(2) Section 3304(a)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.”

Pub. L. 91-373, title I, §108(b), Aug. 10, 1970, 84 Stat. 701, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to certification of State laws for 1972 and subsequent years; except that section 3304(a)(12) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as

added by subsection (a)) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971, or prior to January 1, 1975, if compliance with such requirement would necessitate a change in the constitution of such State.”

Pub. L. 91-373, title I, §121(b), Aug. 10, 1970, 84 Stat. 702, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect January 1, 1972, and shall apply to the taxable year 1972 and taxable years thereafter.

“(2) Paragraphs (7) through (10) of section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) shall not be requirements for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.”

Amendment by section 142(f)–(h) of Pub. L. 91-373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91-373, set out as a note under section 3302 of this title.

#### SELF-EMPLOYMENT ASSISTANCE PROGRAMS

Pub. L. 112-96, title II, §§2182-2184, Feb. 22, 2012, 126 Stat. 182-184, provided that:

#### “SEC. 2182. GRANTS FOR SELF-EMPLOYMENT ASSISTANCE PROGRAMS.

##### “(a) IN GENERAL.—

“(1) ESTABLISHMENT OR IMPROVED ADMINISTRATION.—Subject to the requirements established under subsection (b), the Secretary shall award grants to States for the purposes of—

“(A) improved administration of self-employment assistance programs that have been established, prior to the date of the enactment of this Act [Feb. 22, 2012], pursuant to section 3306(t) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(t)), for individuals who are eligible to receive regular unemployment compensation;

“(B) development, implementation, and administration of self-employment assistance programs that are established, subsequent to the date of the enactment of this Act, pursuant to section 3306(t) of the Internal Revenue Code of 1986, for individuals who are eligible to receive regular unemployment compensation; and

“(C) development, implementation, and administration of self-employment assistance programs that are established pursuant to section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below] or section 4001(j) of the Supplemental Appropriations Act, 2008, [Pub. L. 110-252, set out below] for individuals who are eligible to receive extended compensation or emergency unemployment compensation.

“(2) PROMOTION AND ENROLLMENT.—Subject to the requirements established under subsection (b), the Secretary shall award additional grants to States that submit approved applications for a grant under paragraph (1) for such States to promote self-employment assistance programs and enroll unemployed individuals in such programs.

##### “(b) APPLICATION AND DISBURSAL.—

“(1) APPLICATION.—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as is determined appropriate by the Secretary. In no case shall the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2013.

“(2) NOTICE.—Not later than 30 days after receiving an application described in paragraph (1) from a

State, the Secretary shall notify the State agency as to whether a grant has been approved for such State for the purposes described in subsection (a).

“(3) CERTIFICATION.—If the Secretary determines that a State has met the requirements for a grant under subsection (a), the Secretary shall make a certification to that effect to the Secretary of the Treasury, as well as a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund under section 904 of the Social Security Act (42 U.S.C. 1104). The Secretary of the Treasury shall make the appropriate transfer to the State account not later than 7 days after receiving such certification.

“(c) ALLOTMENT FACTORS.—For purposes of allotting the funds available under subsection (d) to States that have met the requirements for a grant under this section, the amount of the grant provided to each State shall be determined based upon the percentage of unemployed individuals in the State relative to the percentage of unemployed individuals in all States.

“(d) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, \$35,000,000 for the period of fiscal year 2012 through fiscal year 2013 for purposes of carrying out the grant program under this section, [sic]

“SEC. 2183. ASSISTANCE AND GUIDANCE IN IMPLEMENTING SELF-EMPLOYMENT ASSISTANCE PROGRAMS.

“(a) MODEL LANGUAGE AND GUIDANCE.—For purposes of assisting States in establishing, improving, and administering self-employment assistance programs, the Secretary shall—

“(1) develop model language that may be used by States in enacting such programs, as well as periodically review and revise such model language; and

“(2) provide technical assistance and guidance in establishing, improving, and administering such programs.

“(b) REPORTING AND EVALUATION.—

“(1) REPORTING.—The Secretary shall establish reporting requirements for States that have established self-employment assistance programs, which shall include reporting on—

“(A) the total number of individuals who received unemployment compensation and—

“(i) were referred to a self-employment assistance program;

“(ii) participated in such program; and

“(iii) received an allowance under such program;

“(B) the total amount of allowances provided to individuals participating in a self-employment assistance program;

“(C) the total income (as determined by survey or other appropriate method) for businesses that have been established by individuals participating in a self-employment assistance program, as well as the total number of individuals employed through such businesses; and

“(D) any additional information, as determined appropriate by the Secretary.

“(2) EVALUATION.—Not later than 5 years after the date of the enactment of this Act [Feb. 22, 2012], the Secretary shall submit to Congress a report that evaluates the effectiveness of self-employment assistance programs established by States, including—

“(A) an analysis of the implementation and operation of self-employment assistance programs by States;

“(B) an evaluation of the economic outcomes for individuals who participated in a self-employment assistance program as compared to individuals who received unemployment compensation and did not participate in a self-employment assistance program, including a comparison as to employment status, income, and duration of receipt of unemployment compensation or self-employment assistance allowances; and

“(C) an evaluation of the state of the businesses started by individuals who participated in a self-employment assistance program, including information regarding—

“(i) the type of businesses established;

“(ii) the sustainability of the businesses;

“(iii) the total income collected by the businesses;

“(iv) the total number of individuals employed through such businesses; and

“(v) the estimated Federal and State tax revenue collected from such businesses and their employees.

“(c) FLEXIBILITY AND ACCOUNTABILITY.—The model language, guidance, and reporting requirements developed by the Secretary under subsections (a) and (b) shall—

“(1) allow sufficient flexibility for States and participating individuals; and

“(2) ensure accountability and program integrity.

“(d) CONSULTATION.—For purposes of developing the model language, guidance, and reporting requirements described under subsections (a) and (b), the Secretary shall consult with employers, labor organizations, State agencies, and other relevant program experts.

“(e) ENTREPRENEURIAL TRAINING PROGRAMS.—The Secretary shall utilize resources available through the Department of Labor and coordinate with the Administrator of the Small Business Administration to ensure that adequate funding is reserved and made available for the provision of entrepreneurial training to individuals participating in self-employment assistance programs.

“(f) SELF-EMPLOYMENT ASSISTANCE PROGRAM.—For purposes of this section, the term ‘self-employment assistance program’ means a program established pursuant to section 3306(t) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(t)), section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below], or section 4001(j) of the Supplemental Appropriations Act, 2008, [Pub. L. 110-252, set out below] for individuals who are eligible to receive regular unemployment compensation, extended compensation, or emergency unemployment compensation.

SEC. 2184. DEFINITIONS.

“In this subtitle [subtitle E (§§ 2181–2184) of title II of Pub. L. 112-96, enacting this note and amending provisions set out as notes under this section]:

“(1) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor.

“(2) STATE; STATE AGENCY.—The terms ‘State’ and ‘State agency’ have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373] (26 U.S.C. 3304 note).”

TREATMENT OF ADDITIONAL REGULAR COMPENSATION

Pub. L. 111-92, § 8, Nov. 6, 2009, 123 Stat. 2988, provided that: “The monthly equivalent of any additional compensation paid by reason of section 2002 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111-5 (26 U.S.C. 3304 note; 123 Stat. 438 [437]) shall be disregarded after the date of the enactment of this Act [Nov. 6, 2009] in considering the amount of income and assets of an individual for purposes of determining such individual’s eligibility for, or amount of, benefits under the Supplemental Nutrition Assistance Program (SNAP).”

INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS

Pub. L. 111-5, div. B, title II, § 2002, Feb. 17, 2009, 123 Stat. 437, as amended by Pub. L. 111-118, div. B, § 1009(a)(2), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111-144, § 2(a)(2), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111-157, § 2(a)(2), Apr. 15, 2010, 124 Stat. 1116, provided that:

“(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of

Labor (hereinafter in this section referred to as the 'Secretary'). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

“(b) PROVISIONS OF AGREEMENT.—

“(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional \$25.

“(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

“(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

“(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

“(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

“(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

“(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

“(d) PAYMENTS TO STATES.—

“(1) IN GENERAL.—

“(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

“(i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and

“(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

“(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

“(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

“(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

“(e) APPLICABILITY.—

“(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

“(A) beginning after the date on which such agreement is entered into; and

“(B) ending on or before June 2, 2010.

“(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JUNE 2, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

“(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after December 7, 2010.

“(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 122 Stat. 2356) [set out below] shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

“(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

“(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

“(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

“(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

“(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

“(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].

“(i) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘compensation’, ‘regular compensation’, ‘benefit year’, ‘State’, ‘State agency’, ‘State law’, and ‘week’ have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note);

“(2) the term ‘emergency unemployment compensation’ means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 122 Stat. 2353) [set out below]; and

“(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

“(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below]); and

“(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986)

provided under any program administered by a State under an agreement with the Secretary.”

[Pub. L. 111-157, §2(c), Apr. 15, 2010, 124 Stat. 1117, provided that: “The amendments made by this section [amending section 2002 of Pub. L. 111-5, set out above, and section 2005 of Pub. L. 111-5, section 5 of Pub. L. 110-449, and sections 4004 and 4007 of Pub. L. 110-252, set out below] shall take effect as if included in the enactment of the Temporary Extension Act of 2010 (Public Law 111-144).”]

**FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD**

Pub. L. 111-5, div. B, title II, §2005, Feb. 17, 2009, 123 Stat. 444, as amended by Pub. L. 111-118, div. B, §1009(a)(3), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111-144, §2(a)(3), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111-157, §2(a)(3), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111-205, §2(a)(2), July 22, 2010, 124 Stat. 2236; Pub. L. 111-312, title V, §501(a)(2), Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112-78, title II, §201(a)(2), Dec. 23, 2011, 125 Stat. 1282; Pub. L. 112-96, title II, §2123(a), Feb. 22, 2012, 126 Stat. 166; Pub. L. 112-240, title V, §502(a), Jan. 2, 2013, 126 Stat. 2344, provided that:

“(a) **IN GENERAL.**—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section [Feb. 17, 2009] and before December 31, 2013, section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note) shall be applied by substituting ‘100 percent of’ for ‘one-half of’.

“(b) **SPECIAL RULE.**—At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this section [Feb. 17, 2009] and before December 31, 2013, an individual’s eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below]) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

“(1) after the date as of which such individual exhausts all rights to emergency unemployment compensation; and

“(2) during an extended benefit period that began on or before the date described in paragraph (1).

“(c) **LIMITED EXTENSION.**—In the case of an individual who receives extended compensation with respect to 1 or more weeks of unemployment beginning after the date of the enactment of this Act [Feb. 17, 2009] and before December 31, 2013, the provisions of subsections (a) and (b) shall, at the option of a State, be applied by substituting ‘ending before June 30, 2014’ for ‘before December 31, 2013’.

“(d) **EXTENSION OF TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.**—

“(1) **IN GENERAL.**—[Amended section 5 of Pub. L. 110-449, set out below.]

“(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2008 (Public Law 110-449).

“(e) **DEFINITIONS.**—For purposes of this section—

“(1) the terms ‘sharable extended compensation’ and ‘sharable regular compensation’ have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below];

“(2) the terms ‘extended compensation’, ‘State’, ‘State law’, and ‘week’ have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below];

“(3) the term ‘emergency unemployment compensation’ means benefits payable to individuals under title IV of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252, set out below] with respect to their unemployment; and

“(4) the term ‘extended benefit period’ means an extended benefit period as determined in accordance with applicable provisions of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373, set out below].

“(f) **REGULATIONS.**—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.”

[Pub. L. 112-240, title V, §502(d), Jan. 2, 2013, 126 Stat. 2344, provided that: “The amendments made by this section [amending section 2005 of Pub. L. 111-5, set out above, and section 5 of Pub. L. 110-449 and section 203 of Pub. L. 91-373, set out below] shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 (subtitle B of title II of Public Law 112-96).”]

[Pub. L. 112-96, title II, §2123(d), Feb. 22, 2012, 126 Stat. 167, provided that: “The amendments made by this section [amending section 2005 of Pub. L. 111-5, set out above, and section 5 of Pub. L. 110-449 and section 203 of Pub. L. 91-373, set out below] shall take effect as if included in the enactment of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78).”]

[Pub. L. 112-78, title II, §201(c), Dec. 23, 2011, 125 Stat. 1283, provided that: “The amendments made by this section [amending section 2005 of Pub. L. 111-5, set out above, section 5 of Pub. L. 110-449, sections 4004 and 4007 of Pub. L. 110-252, and section 203 of Pub. L. 91-373, set out below] shall take effect as if included in the enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312).”]

[Pub. L. 111-312, title V, §501(c), Dec. 17, 2010, 124 Stat. 3307, provided that: “The amendments made by this section [amending section 2005 of Pub. L. 111-5, set out above, and section 5 of Pub. L. 110-449 and sections 4004 and 4007 of Pub. L. 110-252, set out below] shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2010 (Public Law 111-205).”]

[Pub. L. 111-205, §2(d), July 22, 2010, 124 Stat. 2237, provided that: “The amendments made by this section [amending section 2005 of Pub. L. 111-5, set out above, and section 5 of Pub. L. 110-449 and sections 4001, 4004, and 4007 of Pub. L. 110-252, set out below] shall take effect as if included in the enactment of the Continuing Extension Act of 2010 (Public Law 111-157).”]

[Amendment by Pub. L. 111-157 to section 2005 of Pub. L. 111-5, set out above, effective as if included in the enactment of Pub. L. 111-144, see section 2(c) of Pub. L. 111-157, set out following section 2002 of Pub. L. 111-5 above.]

**TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK**

Pub. L. 110-449, §5, Nov. 21, 2008, 122 Stat. 5015; as amended by Pub. L. 111-5, div. B, title II, §2005(d)(1), Feb. 17, 2009, 123 Stat. 444; Pub. L. 111-118, div. B, §1009(a)(4), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111-144, §2(a)(4), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111-157, §2(a)(4), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111-205, §2(a)(3), July 22, 2010, 124 Stat. 2236; Pub. L. 111-312, title V, §501(a)(3), Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112-78, title II, §201(a)(3), Dec. 23, 2011, 125 Stat. 1282; Pub. L. 112-96, title II, §2123(b), Feb. 22, 2012, 126 Stat. 167; Pub. L. 112-240, title V, §502(b), Jan. 2, 2013, 126 Stat. 2344, provided that: “With respect to weeks of unemployment beginning after the date of the enactment of this Act [Nov. 21, 2008] and ending on or before June 30, 2014, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373] (26 U.S.C. 3304 note) shall not apply.”

[Amendment by section 502(b) of Pub. L. 112-240 to section 5 of Pub. L. 110-449, set out above, effective as if included in the enactment of subtitle B of title II of Pub. L. 112-96, see section 502(d) of Pub. L. 112-240, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 2123(b) of Pub. L. 112-96 to section 5 of Pub. L. 110-449, set out above, effective as

if included in the enactment of Pub. L. 112-78, see section 2123(d) of Pub. L. 112-96, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 201(a)(3) of Pub. L. 112-78 to section 5 of Pub. L. 110-449, set out above, effective as if included in the enactment of Pub. L. 111-312, see section 201(c) of Pub. L. 112-78, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 501(a)(3) of Pub. L. 111-312 to section 5 of Pub. L. 110-449, set out above, effective as if included in the enactment of Pub. L. 111-205, see section 501(c) of Pub. L. 111-312, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 2(a)(3) of Pub. L. 111-205 to section 5 of Pub. L. 110-449, set out above, effective as if included in the enactment of Pub. L. 111-157, see section 2(d) of Pub. L. 111-205, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 2(a)(4) of Pub. L. 111-157 to section 5 of Pub. L. 110-449, set out above, effective as if included in the enactment of Pub. L. 111-144, see section 2(c) of Pub. L. 111-157, set out following section 2002 of Pub. L. 111-5 above.]

#### EMERGENCY UNEMPLOYMENT COMPENSATION, 2008

Pub. L. 110-252, title IV, June 30, 2008, 122 Stat. 2353, as amended by Pub. L. 110-449, §§ 2-4, Nov. 21, 2008, 122 Stat. 5014, 5015; Pub. L. 111-5, div. B, title II, § 2001, Feb. 17, 2009, 123 Stat. 436; Pub. L. 111-92, §§ 2(a), 3(a), (b), 4(a), (b), 5, 6, Nov. 6, 2009, 123 Stat. 2984-2987; Pub. L. 111-118, div. B, § 1009(a)(1), (b), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111-144, § 2(a)(1), (b), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111-157, § 2(a)(1), (b), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111-205, §§ 2(a)(1), (b), (c), 3(a), 4, July 22, 2010, 124 Stat. 2236-2238; Pub. L. 111-312, title V, § 501(a)(1), (b), Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112-78, title II, § 201(a)(1), (b), Dec. 23, 2011, 125 Stat. 1282, 1283; Pub. L. 112-96, title II, §§ 2122(a)-(e), 2141, 2142(a), (c), 2143, 2181(b), Feb. 22, 2012, 126 Stat. 163-166, 168-170, 180; Pub. L. 112-240, title V, §§ 501(a), (b), 503(a), Jan. 2, 2013, 126 Stat. 2343, 2344, provided that:

#### “FEDERAL-STATE AGREEMENTS

“SEC. 4001. (a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the ‘Secretary’). Any State which is a party to an agreement under this title may, upon providing 30 days’ written notice to the Secretary, terminate such agreement.

“(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation to individuals who—

“(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007);

“(2) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

“(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

“(4) are able to work, available to work, and actively seeking work.

“(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual’s rights to regular compensation under a State law when—

“(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual’s base period; or

“(2) such individual’s rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

“(d) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this title—

“(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents’ allowances) payable to such individual during such individual’s benefit year under the State law for a week of total unemployment;

“(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for emergency unemployment compensation and the payment thereof, except—

“(A) that an individual shall not be eligible for emergency unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note); and

“(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

“(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an emergency unemployment compensation account is established under section 4002 shall not exceed the amount established in such account for such individual.

“(e) COORDINATION RULE.—An agreement under this section shall apply with respect to a State only upon a determination by the Secretary that, under the State law or other applicable rules of such State, the payment of extended compensation for which an individual is otherwise eligible must be deferred until after the payment of any emergency unemployment compensation under section 4002, as amended by the Unemployment Benefits Extension Act of 2012 [subtitle B of title II of Pub. L. 112-96], for which the individual is concurrently eligible.

“(f) UNAUTHORIZED ALIENS INELIGIBLE.—A State shall require as a condition of eligibility for emergency unemployment compensation under this Act [probably means “this title”] that each alien who receives such compensation must be legally authorized to work in the United States, as defined for purposes of the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.). In determining whether an alien meets the requirements of this subsection, a State must follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)).

“(g) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

“(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement occurring on or after June 2, 2010 (determined disregarding any additional amounts attributable to the modification described in section 2002(b)(1) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111-5 (26 U.S.C. 3304 note; 123 Stat. 438)), will be less than

“(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on June 2, 2010.

“(h) ACTIVELY SEEKING WORK.—

“(1) IN GENERAL.—For purposes of subsection (b)(4), the term ‘actively seeking work’ means, with respect to any individual, that such individual—

“(A) is registered for employment services in such a manner and to such extent as prescribed by the State agency;

“(B) has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual’s skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;

“(C) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

“(D) when requested, has provided such work search record to the State agency.

“(2) RANDOM AUDITING.—The Secretary shall establish for each State a minimum number of claims for which work search records must be audited on a random basis in any given week.

“(i) PROVISION OF SERVICES AND ACTIVITIES.—

“(1) IN GENERAL.—An agreement under this section shall require the following:

“(A) The State which is party to such agreement shall provide reemployment services and reemployment and eligibility assessment activities to each individual—

“(i) who, on or after the 30th day after the date of enactment of the Extended Benefits, Reemployment, and Program Integrity Improvement Act [Feb. 22, 2012], begins receiving amounts described in subsections (b) and (c); and

“(ii) while such individual continues to receive emergency unemployment compensation under this title.

“(B) As a condition of eligibility for emergency unemployment compensation for any week—

“(i) a claimant who has been duly referred to reemployment services shall participate in such services; and

“(ii) a claimant shall be actively seeking work (determined applying subsection (i) [probably means subsection (h)]).

“(2) DESCRIPTION OF SERVICES AND ACTIVITIES.—The reemployment services and in-person reemployment and eligibility assessment activities provided to individuals receiving emergency unemployment compensation described in paragraph (1)—

“(A) shall include—

“(i) the provision of labor market and career information;

“(ii) an assessment of the skills of the individual;

“(iii) orientation to the services available through the one-stop centers established under title I of the Workforce Investment Act of 1998 [former 29 U.S.C. 2801 et seq.]; and

“(iv) review of the eligibility of the individual for emergency unemployment compensation relating to the job search activities of the individual; and

“(B) may include the provision of—

“(i) comprehensive and specialized assessments;

“(ii) individual and group career counseling;

“(iii) training services;

“(iv) additional reemployment services; and

“(v) job search counseling and the development or review of an individual reemployment plan that includes participation in job search activities and appropriate workshops.

“(3) PARTICIPATION REQUIREMENT.—As a condition of continuing eligibility for emergency unemployment compensation for any week, an individual who has been referred to reemployment services or reemployment and eligibility assessment activities under this subsection shall participate in such services or activities, unless the State agency responsible for the administration of State unemployment compensation law determines that—

“(A) such individual has completed participating in such services or activities; or

“(B) there is justifiable cause for failure to participate or to complete participating in such services or activities, as determined in accordance with guidance to be issued by the Secretary.

“(j) AUTHORITY TO CONDUCT SELF-EMPLOYMENT ASSISTANCE PROGRAM.—

“(1) IN GENERAL.—

“(A) ESTABLISHMENT.—Any agreement under subsection (a) may provide that the State agency of the State shall establish a self-employment assistance program, as described in paragraph (2), to provide for the payment of emergency unemployment compensation as self-employment assistance allowances to individuals who would otherwise satisfy the eligibility criteria specified in subsection (b).

“(B) PAYMENT OF ALLOWANCES.—Subject to subparagraph (C), the self-employment assistance allowance described in subparagraph (A) shall be paid to an eligible individual from such individual’s emergency unemployment compensation account, as described in section 4002, and the amount in such account shall be reduced accordingly.

“(C) LIMITATION ON SELF-EMPLOYMENT ASSISTANCE FOR INDIVIDUALS RECEIVING EXTENDED COMPENSATION AND EMERGENCY UNEMPLOYMENT COMPENSATION.—

“(i) COMBINED ELIGIBILITY LIMIT.—Subject to clause (ii), for purposes of self-employment assistance programs established under this subsection and section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below], an individual shall be provided with self-employment assistance allowances under such programs for a total of not greater than 26 weeks (referred to in this subsection as the ‘combined eligibility limit’).

“(ii) CARRYOVER RULE.—For purposes of an individual who is participating in a self-employment assistance program established under this subsection and has not reached the combined eligibility limit as of the date on which such individual exhausts all rights to extended compensation under this title, the individual shall be eligible to receive self-employment assistance allowances under a self-employment assistance program established under section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 until such individual has reached the combined eligibility limit, provided that the individual otherwise satisfies the eligibility criteria described under title II of such Act [probably means title II of Pub. L. 91-373, set out below].

“(2) DEFINITION OF ‘SELF-EMPLOYMENT ASSISTANCE PROGRAM’.—For the purposes of this section, the term ‘self-employment assistance program’ means a program as defined under section 3306(t) of the Internal Revenue Code of 1986, except as follows:

“(A) all references to ‘regular unemployment compensation under the State law’ shall be deemed to refer instead to ‘emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008’ [this note];

“(B) paragraph (3)(B) shall not apply;

“(C) clause (i) of paragraph (3)(C) shall be deemed to state as follows:

“(i) include any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance; and;

“(D) the reference to ‘5 percent’ in paragraph (4) shall be deemed to refer instead to ‘1 percent’; and

“(E) paragraph (5) shall not apply.

“(3) AVAILABILITY OF SELF-EMPLOYMENT ASSISTANCE ALLOWANCES.—In the case of an individual who is eligible to receive emergency unemployment compensation payment under this title, such individual shall not receive self-employment assistance allowances under this subsection unless the State agency has a



reasonable expectation that such individual will be entitled to at least 13 times the individual's average weekly benefit amount of extended compensation and emergency unemployment compensation.

“(4) PARTICIPANT OPTION TO TERMINATE PARTICIPATION IN SELF-EMPLOYMENT ASSISTANCE PROGRAM.—

“(A) TERMINATION.—An individual who is participating in a self-employment assistance program established under this subsection may elect to discontinue participation in such program at any time.

“(B) CONTINUED ELIGIBILITY FOR EMERGENCY UNEMPLOYMENT COMPENSATION.—For purposes of an individual whose participation in the self-employment assistance program established under this subsection is terminated pursuant to paragraph (1)(C) or who has discontinued participation in such program, if the individual continues to satisfy the eligibility requirements for emergency unemployment compensation under this title, the individual shall receive emergency unemployment compensation payments with respect to subsequent weeks of unemployment, to the extent that amounts remain in the account established for such individual under section 4002(b) or to the extent that such individual commences receiving the amounts described in subsections (c), (d), or (e) of such section, respectively.

“EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT

“SEC. 4002. (a) IN GENERAL.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

“(b) AMOUNT IN ACCOUNT.—

“(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

“(A) 80 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under such law, or

“(B) 20 times the individual's average weekly benefit amount for the benefit year.

“(2) SPECIAL RULE RELATING TO AMOUNTS ESTABLISHED IN AN ACCOUNT AS OF A WEEK ENDING AFTER SEPTEMBER 2, 2012.—Notwithstanding any provision of paragraph (1), in the case of any account established as of a week ending after September 2, 2012—

“(A) paragraph (1)(A) shall be applied by substituting ‘54 percent’ for ‘80 percent’; and

“(B) paragraph (1)(B) shall be applied by substituting ‘14 weeks’ for ‘20 weeks’ [probably should be ‘14 times’ for ‘20 times’].

“(3) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

“(c) SECOND-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

“(1) IN GENERAL.—If, at the time that the amount established in an individual's account under subsection (b) is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be augmented by an amount (hereinafter ‘second-tier emergency unemployment compensation’) equal to the lesser of—

“(A) 54 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law, or

“(B) 14 times the individual's average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

“(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an

extended benefit period, as of any given time, if such a period would then be in effect for such State under such Act [probably means title II of Pub. L. 91-373] if—

“(A) section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below] were applied to such State (regardless of whether the State by law had provided for such application); and

“(B) such section 203(f)—

“(i) were applied by substituting the applicable percentage under paragraph (3) for ‘6.5 percent’ in paragraph (1)(A)(i) thereof; and

“(ii) did not include the requirement under paragraph (1)(A)(ii) thereof.

“(3) APPLICABLE PERCENTAGE.—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

“(A) before June 1, 2012, 0 percent; and

“(B) after the last week under subparagraph (A), 6 percent.

“(4) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

“(d) THIRD-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

“(1) IN GENERAL.—If, at the time that the amount added to an individual's account under subsection (c)(1) (hereinafter ‘second-tier emergency unemployment compensation’) is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be further augmented by an amount (hereinafter ‘third-tier emergency unemployment compensation’) equal to the lesser of—

“(A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

“(B) 13 times the individual's average weekly benefit amount (as determined under subsection (b)(2) [probably should be ‘(b)(3)’] for the benefit year.

“(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

“(A) such a period would then be in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373, set out below] if section 203(d) of such Act—

“(i) were applied by substituting ‘4’ for ‘5’ each place it appears; and

“(ii) did not include the requirement under paragraph (1)(A) thereof; or

“(B) such a period would then be in effect for such State under such Act if—

“(i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

“(ii) such section 203(f)—

“(I) were applied by substituting the applicable percentage under paragraph (3) for ‘6.5 percent’ in paragraph (1)(A)(i) thereof; and

“(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

“(3) APPLICABLE PERCENTAGE.—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

“(A) before June 1, 2012, 6 percent; and

“(B) after the last week under subparagraph (A), 7 percent.

“(4) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

“(5) SPECIAL RULE RELATING TO AMOUNTS ADDED TO AN ACCOUNT AS OF A WEEK ENDING AFTER SEPTEMBER 2, 2012.—Notwithstanding any provision of paragraph (1), if augmentation under this subsection occurs as of a week ending after September 2, 2012—

“(A) paragraph (1)(A) shall be applied by substituting ‘35 percent’ for ‘50 percent’; and

“(B) paragraph (1)(B) shall be applied by substituting ‘9 times’ for ‘13 times’.

“(e) FOURTH-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

“(1) IN GENERAL.—If, at the time that the amount added to an individual’s account under subsection (d)(1) (third-tier emergency unemployment compensation) is exhausted or at any time thereafter, such individual’s State is in an extended benefit period (as determined under paragraph (2)), such account shall be further augmented by an amount (hereinafter ‘fourth-tier emergency unemployment compensation’) equal to the lesser of—

“(A) 24 percent of the total amount of regular compensation (including dependents’ allowances) payable to the individual during the individual’s benefit year under the State law; or

“(B) 6 times the individual’s average weekly benefit amount (as determined under subsection (b)(2) [probably should be “(b)(3)’”]) for the benefit year.

“(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

“(A) such a period would then be in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373, set out below] if section 203(d) of such Act—

“(i) were applied by substituting ‘6’ for ‘5’ each place it appears; and

“(ii) did not include the requirement under paragraph (1)(A) thereof; or

“(B) such a period would then be in effect for such State under such Act if—

“(i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

“(ii) such section 203(f)—

“(I) were applied by substituting the applicable percentage under paragraph (3) for ‘6.5 percent’ in paragraph (1)(A)(i) thereof; and

“(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

“(3) APPLICABLE PERCENTAGE.—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

“(A) before June 1, 2012, 8.5 percent; and

“(B) after the last week under subparagraph (A), 9 percent.

“(4) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

“(5) SPECIAL RULES RELATING TO AMOUNTS ADDED TO AN ACCOUNT.—

“(A) MARCH TO MAY OF 2012.—

“(i) SPECIAL RULE.—Notwithstanding any provision of paragraph (1) but subject to the following 2 sentences, if augmentation under this subsection occurs as of a week ending after the date of enactment of this paragraph [Feb. 22, 2012] and before June 1, 2012 (or if, as of such date of enactment, any fourth-tier amounts remain in the individual’s account)—

“(I) paragraph (1)(A) shall be applied by substituting ‘62 percent’ for ‘24 percent’; and

“(II) paragraph (1)(B) shall be applied by substituting ‘16 times’ for ‘6 times’.

The preceding sentence shall apply only if, at the time that the account would be augmented under this subparagraph, such individual’s State is not in an extended benefit period as determined under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373, set out below]. In no event shall the total amount added to the account of an individual under this subparagraph cause, in the case of an individual described in the parenthetical matter in the first sentence of this clause, the sum of the total

amount previously added to such individual’s account under this subsection (as in effect before the date of enactment of this paragraph) and any further amounts added as a result of the enactment of this clause, to exceed the total amount allowable under subclause (I) or (II), as the case may be.

“(ii) LIMITATION.—Notwithstanding any other provision of this title, the amounts added to the account of an individual under this subparagraph may not cause the sum of the amounts previously established in or added to such account, plus any weeks of extended benefits provided to such individual under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373, set out below] (based on the same exhaustion of regular compensation under section 4001(b)(1)), to in the aggregate exceed the lesser of—

“(I) 282 percent of the total amount of regular compensation (including dependents’ allowances) payable to the individual during the individual’s benefit year under the State law; or

“(II) 73 times the individual’s average weekly benefit amount (as determined under subsection (b)(3)) for the benefit year.

“(B) AFTER AUGUST OF 2012.—Notwithstanding any provision of paragraph (1), if augmentation under this subsection occurs as of a week ending after September 2, 2012—

“(i) paragraph (1)(A) shall be applied by substituting ‘39 percent’ for ‘24 percent’; and

“(ii) paragraph (1)(B) shall be applied by substituting ‘10 times’ for ‘6 times’.

“(f) COORDINATION RULES.—

“(1) COORDINATION WITH EXTENDED COMPENSATION.—Notwithstanding an election under section 4001(e) by a State to provide for the payment of emergency unemployment compensation prior to extended compensation, such State may pay extended compensation to an otherwise eligible individual prior to any emergency unemployment compensation under subsection (c), (d), or (e) (by reason of the amendments made by sections 2, 3, and 4 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111-92]), if such individual claimed extended compensation for at least 1 week of unemployment after the exhaustion of emergency unemployment compensation under subsection (b) (as such subsection was in effect on the day before the date of the enactment of this subsection [Nov. 6, 2009]).

“(2) COORDINATION WITH TIERS II, III, AND IV.—If a State determines that implementation of the increased entitlement to second-tier emergency unemployment compensation by reason of the amendments made by section 2 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111-92] would unduly delay the prompt payment of emergency unemployment compensation under this title by reason of the amendments made by such Act, such State may elect to pay third-tier emergency unemployment compensation prior to the payment of such increased second-tier emergency unemployment compensation until such time as such State determines that such increased second-tier emergency unemployment compensation may be paid without such undue delay. If a State makes the election under the preceding sentence, then, for purposes of determining whether an account may be augmented for fourth-tier emergency unemployment compensation under subsection (e), such State shall treat the date of exhaustion of such increased second-tier emergency unemployment compensation as the date of exhaustion of third-tier emergency unemployment compensation, if such date is later than the date of exhaustion of the third-tier emergency unemployment compensation.

“(g) COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.—

“(1) If—

“(A) an individual has been determined to be entitled to emergency unemployment compensation with respect to a benefit year,

“(B) that benefit year has expired,

“(C) that individual has remaining entitlement to emergency unemployment compensation with respect to that benefit year, and

“(D) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either \$100 or 25 percent less than the individual’s weekly benefit amount in the benefit year referred to in subparagraph (A).

then the State shall determine eligibility for compensation as provided in paragraph (2).

“(2) For individuals described in paragraph (1), the State shall determine whether the individual is to be paid emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

“(A) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

“(B) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this paragraph), until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

“(C) The State shall pay, if permitted by State law—

“(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

“(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

“(D) The State shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

#### “PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION

“SEC. 4003. (a) GENERAL RULE.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

“(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

“(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary’s estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

#### “FINANCING PROVISIONS

“SEC. 4004. (a) IN GENERAL.—Funds in the extended unemployment compensation account (as established

by section 905(a) of the Social Security Act (42 U.S.C. 1105(a))[] of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))[]) shall be used for the making of payments to States having agreements entered into under this title.

“(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

#### “(c) ASSISTANCE TO STATES.—

“(1) ADMINISTRATION.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))[]) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

#### “(2) REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.—

“(A) APPROPRIATION.—There are appropriated from the general fund of the Treasury, for the period of fiscal year 2012 through fiscal year 2014, out of the employment security administration account (as established by section 901(a) of the Social Security Act [42 U.S.C. 1101(a)]), such sums as determined by the Secretary of Labor in accordance with subparagraph (B) to assist States in providing reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2).

“(B) DETERMINATION OF TOTAL AMOUNT.—The amount referred to in subparagraph (A) is the amount the Secretary of Labor estimates is equal to—

“(i) the number of individuals who will receive reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2) in all States through the date specified in [former] section 4007(b)(3); multiplied by

“(ii) \$85.

“(C) DISTRIBUTION AMONG STATES.—Of the amounts appropriated under subparagraph (A), the Secretary of Labor shall distribute amounts to each State, in accordance with section 4003(c), that the Secretary estimates is equal to—

“(i) the number of individuals who will receive reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2) in such State through the date specified in [former] section 4007(b)(3); multiplied by

“(ii) \$85.

“(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

“(1) compensation payable under chapter 85 of title 5, United States Code; and

“(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

“(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

“(1) to the extended unemployment compensation account (as established by section 905 of the Social

Security Act [42 U.S.C. 1105]) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of—

“(A) the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act [title II of div. B of Pub. L. 111-5];

“(B) the amendments made by sections 2 through 4 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111-92];

“(C) the amendments made by section 1009(a)(1) of the Department of Defense Appropriations Act, 2010 [Pub. L. 111-118];

“(D) the amendments made by section 2(a)(1) of the Temporary Extension Act of 2010 [Pub. L. 111-144];

“(E) the amendments made by section 2(a)(1) of the Continuing Extension Act of 2010 [Pub. L. 111-157];

“(F) the amendments made by section 2(a)(1) of the Unemployment Compensation Extension Act of 2010 [Pub. L. 111-205];

“(G) the amendments made by section 501(a)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111-312];

“(H) the amendments made by section 201(a)(1) of the Temporary Payroll Tax Cut Continuation Act of 2011 [Pub. L. 112-78];

“(I) the amendments made by section 2122 of the Unemployment Benefits Extension Act of 2012 [Pub. L. 112-96]; and

“(J) the amendments made by section 501(a) of the American Taxpayer Relief Act of 2012 [Pub. L. 112-240];

“(2) to the employment security administration account (as established by section 901 of the Social Security Act [42 U.S.C. 1101]) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1); and

“(3) to the Employment Security Administration account (as established by section 901(a) of the Social Security Act [42 U.S.C. 1101(a)]) such sums as the Secretary of Labor determines to be necessary in accordance with subsection (c)(2) to assist States in providing reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

#### “FRAUD AND OVERPAYMENTS

“SEC. 4005. (a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled, such individual—

“(1) shall be ineligible for further emergency unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

“(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

“(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

“(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and

“(2) such repayment would be contrary to equity and good conscience.

“(c) RECOVERY BY STATE AGENCY.—

“(1) IN GENERAL.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

“(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

“(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

#### “DEFINITIONS

“SEC. 4006. In this title, the terms ‘compensation’, ‘regular compensation’, ‘extended compensation’, ‘benefit year’, ‘base period’, ‘State’, ‘State agency’, ‘State law’, and ‘week’ have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note).

#### “APPLICABILITY

“SEC. 4007. (a) IN GENERAL.—An agreement entered into under this title shall apply to weeks of unemployment—

“(1) beginning after the date on which such agreement is entered into; and

“(2) ending on or before January 1, 2014.

“(b) TERMINATION.—No compensation under this title shall be payable for any week subsequent to the last week described in subsection (a).”

[Pub. L. 112-240, title V, §501(c), Jan. 2, 2013, 126 Stat. 2344, provided that: “The amendments made by this section [amending sections 4004 and 4007 of Pub. L. 110-252, set out above] shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 ([subtitle B of title II of] Public Law 112-96).”]

[Pub. L. 112-240, title V, §503(b), Jan. 2, 2013, 126 Stat. 2344, provided that: “The amendments made by this section [amending section 4004 of Pub. L. 110-252, set out above] shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 ([subtitle B of title II of] Public Law 112-96).”]

[Pub. L. 112-96, title II, §2122(f), Feb. 22, 2012, 126 Stat. 166, provided that:

[“(1) IN GENERAL.—The amendments made by subsections (b), (c), and (d) [amending sections 4001 and 4002 of Pub. L. 110-252, set out above] shall take effect as of February 28, 2012, and shall apply with respect to weeks of unemployment beginning after that date.

[“(2) WEEK DEFINED.—For purposes of this subsection, the term ‘week’ has the meaning given such term under section 4006 of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252, set out above].”]

[Pub. L. 112-96, title II, §2142(b), Feb. 22, 2012, 126 Stat. 169, provided that: “Not later than 30 days after

the date of enactment of this Act [Feb. 22, 2012], the Secretary shall issue guidance on the implementation of the reemployment services and reemployment and eligibility assessment activities required to be provided under the amendment made by subsection (a) [amending section 4001 of Pub. L. 110-252, set out above].”]

[Pub. L. 112-96, §2142(c)(2)(A), which directed amendment of section 4004(e)(1)(G) of Pub. L. 110-252, set out above, by striking out “and” at the end, could not be executed because of the prior identical amendment by Pub. L. 112-96, §2122(e)(1).]

[Pub. L. 112-96, §2142(c)(2)(C), which directed amendment of section 4004(e) of Pub. L. 110-252, set out above, by adding par. (3) “at the end”, was executed by adding par. (3) after par. (2), to reflect the probable intent of Congress.]

[Pub. L. 112-96, title II, §2144, Feb. 22, 2012, 126 Stat. 171, provided that: “Subsection (g) of section 4001 of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note) shall not apply with respect to a State that has enacted a law before March 1, 2012, that, upon taking effect, would violate such subsection.”]

[Amendment by section 201(a)(1), (b) of Pub. L. 112-78 to sections 4004 and 4007 of Pub. L. 110-252, set out above, effective as if included in the enactment of Pub. L. 111-312, see section 201(c) of Pub. L. 112-78, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 501(a)(1), (b) of Pub. L. 111-312 to sections 4004 and 4007 of Pub. L. 110-252, set out above, effective as if included in the enactment of Pub. L. 111-205, see section 501(c) of Pub. L. 111-312, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 2(a)(1), (b), (c) of Pub. L. 111-205 to sections 4001, 4004, and 4007 of Pub. L. 110-252, set out above, effective as if included in Pub. L. 111-157, see section 2(d) of Pub. L. 111-205, set out following section 2005 of Pub. L. 111-5 above.]

[Pub. L. 111-205, §3(b), July 22, 2010, 124 Stat. 2238, provided that: “The amendment made by this section [amending section 4002 of Pub. L. 110-252, set out above] shall apply to individuals whose benefit years, as described in section 4002(g)(1)(B) [of] the Supplemental Appropriations Act, 2008 (Public Law 110-252; 26 U.S.C. 3304 note), as amended by this section, expire after the date of enactment of this Act [July 22, 2010].”]

[Amendment by section 2(a)(1), (b) of Pub. L. 111-157 to sections 4004 and 4007 of Pub. L. 110-252, set out above, effective as if included in the enactment of Pub. L. 111-144, see section 2(c) of Pub. L. 111-157, set out following section 2002 of Pub. L. 111-5 above.]

[Pub. L. 111-92, §2(b), Nov. 6, 2009, 123 Stat. 2984, provided that: “The amendments made by this section [amending section 4002 of Pub. L. 110-252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009].”]

[Pub. L. 111-92, §3(c), Nov. 6, 2009, 123 Stat. 2985, provided that: “The amendments made by this section [amending sections 4002 and 4007 of Pub. L. 110-252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009].”]

[Pub. L. 111-92, §4(c), Nov. 6, 2009, 123 Stat. 2986, provided that: “The amendments made by this section [amending sections 4002 and 4007 of Pub. L. 110-252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009].”]

[Pub. L. 110-449, §6, Nov. 21, 2008, 122 Stat. 5015, provided that:

“(a) IN GENERAL.—The amendments made by sections 2, 3, and 4 [amending title IV of Pub. L. 110-252, set out as a note above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252], subject to subsection (b).”]

“(b) ADDITIONAL BENEFITS.—In applying the amendments made by sections 2 and 3, any additional emergency unemployment compensation made payable by such amendments (which would not otherwise have been payable if such amendments had not been enacted) shall be payable only with respect to any week of unemployment beginning on or after the date of the enactment of this Act [Nov. 21, 2008].”]

#### ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR DISPLACED AIRLINE RELATED WORKERS

Pub. L. 108-11, title IV, §4002, Apr. 16, 2003, 117 Stat. 607, provided that:

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘eligible individual’ means an individual whose eligibility for temporary extended unemployment compensation under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147; 116 Stat. 21) [title II of Pub. L. 107-147, set out as a note below], as amended by Public Law 108-1 (117 Stat. 3), is or would be based on the exhaustion of regular compensation under State law, entitlement to which was based in whole or in part on qualifying employment performed during such individual’s base period;

“(2) the term ‘qualifying employment’, with respect to an eligible individual, means employment—

“(A) with an air carrier, employment at a facility at an airport, or with an upstream producer or supplier for an air carrier; and

“(B) as determined by the Secretary, separation from which was due, in whole or in part, to—

“(i) reductions in service by an air carrier as a result of a terrorist action or security measure;

“(ii) a closure of an airport in the United States as a result of a terrorist action or security measure; or

“(iii) a military conflict with Iraq that has been authorized by Congress;

“(3) the term ‘air carrier’ means an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code;

“(4) the term ‘upstream producer’ means a firm that performs additional, value-added, production processes, including firms that perform final assembly, finishing, or packaging of articles, for another firm;

“(5) the term ‘supplier’ means a firm that produces component parts for, or articles and contract services considered to be a part of the production process or services for, another firm;

“(6) the term ‘Secretary’ means the Secretary of Labor; and

“(7) the term ‘terrorist action or security measure’ means a terrorist attack on the United States on September 11, 2001, or a security measure taken in response to such attack.

“(b) ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR ELIGIBLE INDIVIDUAL.—In the case of an eligible individual, the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147; 116 Stat. 21), as amended by Public Law 108-1 (117 Stat. 3), shall be applied as if it had been amended in accordance with subsection (c).

“(c) MODIFICATIONS.—

“(1) IN GENERAL.—For purposes of subsection (b), the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147; 116 Stat. 21), as amended by Public Law 108-1 (117 Stat. 3), shall be treated as if it had been amended as provided in this subsection.

“(2) PROGRAM EXTENSION.—Deem section 208 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108-1 (117 Stat. 3), to be amended to read as follows:

“SEC. 208. APPLICABILITY.

“(a) IN GENERAL.—Subject to subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

“(1) beginning after the date on which such agreement is entered into; and

“(2) ending before December 29, 2003.

“(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

“(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 203 as of December 28, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title, including such compensation payable by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section.

“(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after December 26, 2004.’

“(3) ADDITIONAL WEEKS OF BENEFITS.—Deem section 203 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108-1 (117 Stat. 3), to be amended—

“(A) in subsection (b)(1)—

“(i) in subparagraph (A), by striking ‘50’ and inserting ‘150’; and

“(ii) by striking ‘13’ and inserting ‘39’; and

“(B) in subsection (c)(1), by inserting ‘ $\frac{1}{2}$  of’ after ‘equal to’.

“(4) EFFECTIVE DATE OF MODIFICATIONS DESCRIBED IN PARAGRAPH (3).—

“(A) IN GENERAL.—The amendments described in paragraph (3)—

“(i) shall be deemed to have taken effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002; but

“(ii) shall be treated as applying only with respect to weeks of unemployment beginning on or after the date of enactment of this Act [Apr. 16, 2003], subject to subparagraph (B).

“(B) SPECIAL RULES.—In the case of an eligible individual for whom a temporary extended unemployment account was established before the date of enactment of this Act [Apr. 16, 2003], the Temporary Extended Unemployment Compensation Act of 2002 (as amended by this section) shall be applied subject to the following:

“(i) Any amounts deposited in the individual’s temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as ‘TEUC-X amounts’) before the date of enactment of this Act [Apr. 16, 2003] shall be treated as amounts deposited by reason of section 203(b) of such Act (commonly known as ‘TEUC amounts’), as deemed to have been amended by paragraph (3)(A).

“(ii) For purposes of determining whether the individual is eligible for any TEUC-X amounts under such Act, as deemed to be amended by this subsection—

“(I) any determination made under section 203(c) of such Act before the application of the amendment described in paragraph (3)(B) shall be disregarded; and

“(II) any such determination shall instead be made by applying section 203(c) of such Act, as deemed to be amended by paragraph (3)(B), as of the time that all amounts established in such account in accordance with section 203(b) of such Act (as deemed to be amended under this subsection, and including any amounts described in clause (i)) are in fact exhausted.”

TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION

Pub. L. 107-147, title II, Mar. 9, 2002, 116 Stat. 26, as amended by Pub. L. 108-1, §1(a), Jan. 8, 2003, 117 Stat.

3; Pub. L. 108-26, §2(a), May 28, 2003, 117 Stat. 751; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

“SEC. 201. SHORT TITLE.

“This title may be cited as the ‘Temporary Extended Unemployment Compensation Act of 2002’.

“SEC. 202. FEDERAL-STATE AGREEMENTS.

“(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the ‘Secretary’). Any State which is a party to an agreement under this title may, upon providing 30 days’ written notice to the Secretary, terminate such agreement.

“(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of temporary extended unemployment compensation to individuals who—

“(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before March 15, 2001);

“(2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

“(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

“(4) filed an initial claim for regular compensation on or after March 15, 2001.

“(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual’s rights to regular compensation under a State law when—

“(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual’s base period; or

“(2) such individual’s rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

“(d) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this title—

“(1) the amount of temporary extended unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents’ allowances) payable to such individual during such individual’s benefit year under the State law for a week of total unemployment;

“(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for temporary extended unemployment compensation and the payment thereof, except—

“(A) that an individual shall not be eligible for temporary extended unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note); and

“(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

“(3) the maximum amount of temporary extended unemployment compensation payable to any individual for whom a temporary extended unemployment compensation account is established under section

203 shall not exceed the amount established in such account for such individual.

“(e) ELECTION BY STATES.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of temporary extended unemployment compensation in lieu of extended compensation to individuals who otherwise meet the requirements of this section. Such an election shall not require a State to trigger off an extended benefit period.

“SEC. 203. TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

“(a) IN GENERAL.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for temporary extended unemployment compensation, a temporary extended unemployment compensation account with respect to such individual’s benefit year.

“(b) AMOUNT IN ACCOUNT.—

“(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

“(A) 50 percent of the total amount of regular compensation (including dependents’ allowances) payable to the individual during the individual’s benefit year under such law, or

“(B) 13 times the individual’s average weekly benefit amount for the benefit year.

“(2) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual’s weekly benefit amount for any week is the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for such week for total unemployment.

“(c) SPECIAL RULE.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, if, at the time that the individual’s account is exhausted, such individual’s State is in an extended benefit period (as determined under paragraph (2)), then, such account shall be augmented by an amount equal to the amount originally established in such account (as determined under subsection (b)(1)).

“(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period if, at the time of exhaustion (as described in paragraph (1))—

“(A) such a period is then in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373]; or

“(B) such a period would then be in effect for such State under such Act if section 203(d) of such Act were applied as if it had been amended by striking ‘5’ each place it appears and inserting ‘4’.

“SEC. 204. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION.

“(a) GENERAL RULE.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the temporary extended unemployment compensation paid to individuals by the State pursuant to such agreement.

“(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

“(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the

Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary’s estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

“SEC. 205. FINANCING PROVISIONS.

“(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))) shall be used for the making of payments to States having agreements entered into under this title.

“(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

“(c) ASSISTANCE TO STATES.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

“(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

“(1) compensation payable under chapter 85 of title 5, United States Code; and

“(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

“SEC. 206. FRAUD AND OVERPAYMENTS.

“(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of temporary extended unemployment compensation under this title to which he was not entitled, such individual—

“(1) shall be ineligible for further temporary extended unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

“(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

“(b) REPAYMENT.—In the case of individuals who have received amounts of temporary extended unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such temporary extended unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

“(1) the payment of such temporary extended unemployment compensation was without fault on the part of any such individual; and

“(2) such repayment would be contrary to equity and good conscience.

“(c) RECOVERY BY STATE AGENCY.—

“(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any temporary extended unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the temporary extended unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

“(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

“(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

“SEC. 207. DEFINITIONS.

“In this title, the terms ‘compensation’, ‘regular compensation’, ‘extended compensation’, ‘additional compensation’, ‘benefit year’, ‘base period’, ‘State’, ‘State agency’, ‘State law’, and ‘week’ have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note).

“SEC. 208. APPLICABILITY.

“(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

“(1) beginning after the date on which such agreement is entered into; and

“(2) ending on or before December 31, 2003.

“(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

“(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of December 31, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

“(2) NO AUGMENTATION AFTER DECEMBER 31, 2003.—If the account of an individual is exhausted after December 31, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual’s State is in an extended benefit period (as determined under paragraph (2) of such section).

“(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after March 31, 2004.

“SEC. 209. SPECIAL REED ACT TRANSFER IN FISCAL YEAR 2002.

“(a) REPEAL OF CERTAIN PROVISIONS ADDED BY THE BALANCED BUDGET ACT OF 1997.—

“(1) IN GENERAL.—[Amended section 1103 of Title 42, The Public Health and Welfare.]

“(2) SAVINGS PROVISION.—Any amounts transferred before the date of enactment of this Act [Mar. 9, 2002] under the provision repealed by paragraph (1)(A) [amending section 1103 of Title 42] shall remain subject to section 903 of the Social Security Act [42 U.S.C. 1103], as last in effect before such date of enactment.

“(b) SPECIAL TRANSFER IN FISCAL YEAR 2002.—[Amended section 1103 of Title 42.]

“(c) LIMITATIONS ON TRANSFERS.—Section 903(b) of the Social Security Act [42 U.S.C. 1103(b)] shall apply to transfers under section 903(d) of such Act (as amended by this section). For purposes of the preceding sentence, such section 903(b) shall be deemed to be amended as follows:

“(1) By substituting ‘the transfer date described in subsection (d)(5)’ for ‘October 1 of any fiscal year’.

“(2) By substituting ‘remain in the Federal unemployment account’ for ‘be transferred to the Federal unemployment account as of the beginning of such October 1’.

“(3) By substituting ‘fiscal year 2002 (after the transfer date described in subsection (d)(5))’ for ‘the fiscal year beginning on such October 1’.

“(4) By substituting ‘under subsection (d)’ for ‘as of October 1 of such fiscal year’.

“(5) By substituting ‘(as of the close of fiscal year 2002)’ for ‘(as of the close of such fiscal year)’.

“(d) TECHNICAL AMENDMENTS.—

“(1) [Amended sections 3304 and 3306 of this title.]

“(2) [Amended section 503 of Title 42.]

“(e) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section and the amendments made by this section.”

[Pub. L. 108-26, §2(b), May 28, 2003, 117 Stat. 751, provided that: “The amendments made by this section [amending section 208 of Pub. L. 107-147, set out above] shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147 [title II]; 116 Stat. 21 [26]).”]

[Pub. L. 108-1, §1(b), Jan. 8, 2003, 117 Stat. 4, provided that: “The amendment made by this section [amending section 208 of Pub. L. 107-147, set out above] shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147 [title II]; 116 Stat. 21 [26]).”]

#### PROFILING OF NEW CLAIMANTS FOR REGULAR UNEMPLOYMENT COMPENSATION

Pub. L. 103-6, §4, Mar. 4, 1993, 107 Stat. 34, directed Secretary of Labor to establish program for encouraging adoption and implementation by all States of system of profiling all new claimants for regular unemployment compensation to determine which claimants might be likely to exhaust regular unemployment compensation and might need reemployment assistance services, directed Secretary to provide technical assistance and advice to States in development of model profiling systems and procedures for such systems and to provide to each State, from funds available for this purpose, such funds as determined necessary, and directed Secretary to report to Congress on operation and effectiveness of profiling systems adopted by States along with continuation and legislative recommendations, prior to repeal by Pub. L. 103-152, §4(e), Nov. 24, 1993, 107 Stat. 1518.

#### TREATMENT OF PERSIAN GULF CRISIS RESERVISTS

Pub. L. 102-318, title I, §104, July 3, 1992, 106 Stat. 293, provided that: “If—

“(1) an individual who was a member of a reserve component of the Armed Forces was called for active duty after August 2, 1990, and before March 1, 1991,

“(2) such individual was receiving regular compensation, extended compensation, or a trade readjustment allowance for the week in which he was so called,

“(3) such individual served on such active duty for at least 90 consecutive days, and

“(4) such individual was entitled to regular compensation on the basis of his services on such active duty, but the weekly benefit amount was less than the benefit amount he received for the week referred to in paragraph (2),



such individual's weekly benefit amount under the Emergency Unemployment Compensation Act of 1991 [see section 101(d) of Pub. L. 102-164, formerly set out below] for any week beginning after the date of the enactment of this Act [July 3, 1992] shall be not less than the benefit amount he received for the week referred to in paragraph (2)."

STUDY AND REPORT BY FEDERAL ADVISORY COUNCIL ON  
SUSPENSION OF ELIGIBILITY REQUIREMENTS FOR UN-  
EMPLOYMENT BENEFITS

Pub. L. 102-318, title II, §202(b)(2), July 3, 1992, 106 Stat. 297, directed Federal Advisory Council established under 42 U.S.C. 1108 to conduct a study of the provisions suspended by the amendment made by section 202(b)(1) of Pub. L. 102-318, enacting section 202(a)(7) of Pub. L. 91-373, set out below, and to submit, not later than Feb. 1, 1994, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate, a report of its recommendations on such suspended provisions.

INFORMATION REQUIRED WITH RESPECT TO TAXATION OF  
UNEMPLOYMENT BENEFITS

Pub. L. 102-318, title III, §301, July 3, 1992, 106 Stat. 297, provided that:

"(a) INFORMATION ON UNEMPLOYMENT BENEFITS.—

"(1) GENERAL RULE.—The State agency in each State shall provide to an individual filing a claim for compensation under the State unemployment compensation law a written explanation of the Federal and State income taxation of unemployment benefits and of the requirements to make payments of estimated Federal and State income taxes.

"(2) STATE AGENCY.—For purposes of this subsection, the term 'State agency' has the meaning given such term by section 3306(e) of the Internal Revenue Code of 1986.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992."

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF  
1991

Pub. L. 102-164, §1, titles I, II, Nov. 15, 1991, 105 Stat. 1049, 1056, as amended by Pub. L. 102-182, §3(a)(1)-(6), Dec. 4, 1991, 105 Stat. 1234; Pub. L. 102-244, §§1(a), (b), 2, Feb. 7, 1992, 106 Stat. 3, 4; Pub. L. 102-318, title I, §§101(a)-(d), 102(a), 103(a), 107, July 3, 1992, 106 Stat. 290-293, 295; Pub. L. 103-6, §2(a)-(c), Mar. 4, 1993, 107 Stat. 33; Pub. L. 103-152, §§2(a)-(d), 3(a), Nov. 24, 1993, 107 Stat. 1516, 1517, known as the "Emergency Unemployment Compensation Act of 1991", established an emergency unemployment compensation program for individuals eligible during the period of Nov. 17, 1991, to Feb. 5, 1994, and directed the Secretary of Labor to carry out a job search assistance demonstration program with a final report to Congress on the effectiveness of the demonstration program due not later than 5 years after the commencement of the program.

DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH  
RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS

Pub. L. 100-203, title IX, §9151, Dec. 22, 1987, 101 Stat. 1330-322, provided that: "For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below] with respect to the implementation of paragraph (3) of section 202(a) of such Act [section 202(a) of Pub. L. 91-373, set out below] (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980 [Pub. L. 96-499]), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982."

DEMONSTRATION PROGRAM TO PROVIDE SELF-  
EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS

Pub. L. 100-203, title IX, §9152, Dec. 22, 1987, 101 Stat. 1330-322, as amended by Pub. L. 100-647, title VIII, §8301, Nov. 10, 1988, 102 Stat. 3798, provided that:

"(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

"(1) apply to participate in such program, and

"(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

"(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

"(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

"(B) existing local market conditions and the business climate for new, small business enterprises in the State;

"(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

"(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

"(E) the design of the evaluation to be applied by the State to the program; and

"(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

"(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

"(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

"(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

"(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

"(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

"(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

"(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

"(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

"(5) the State shall implement a program that—

“(A) is approved by the Secretary;

“(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act [42 U.S.C. 1104(a)] in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

“(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

“(D) otherwise meets the requirements of this section; and

“(6) the State, from its general revenue funds, shall—

“(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

“(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

“(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

“(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

“(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act [42 U.S.C. 503(a)(5)] and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

“(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91-373, set out below], payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

“(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act [42 U.S.C. 501 et seq.] or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

“(g) REPORT TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act [Dec. 22, 1987], the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

“(A) information on the extent to which this section has been utilized;

“(B) an analysis of any barriers to such utilization; and

“(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

“(2) Not later than six years after the date of the enactment of this Act [Dec. 22, 1987], the Secretary shall submit a final report to the Congress on such program.

“(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

“(A) ineligible for further assistance under this section; and

“(B) subject to prosecution under section 1001 of title 18, United States Code.

“(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

“(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

“(ii) such repayment would be contrary to equity and good conscience.

“(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

“(i) DEFINITIONS.—For purposes of this section—

“(1) the term ‘eligible individual’ means, with respect to any benefit year, an individual who—

“(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

“(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

“(C) submits an application to the State agency for a self-employment allowance under this section; and

“(D) meets applicable State requirements, except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

“(2) the term ‘self-employment allowance’ means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

“(3) the terms ‘compensation’, ‘extended compensation’, ‘regular compensation’, ‘benefit year’, ‘State’, and ‘State law’, have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373, set out below].”

#### SUPPLEMENTAL UNEMPLOYMENT COMPENSATION FOR CERTAIN INDIVIDUALS

Pub. L. 99-272, title XII, §12402, Apr. 7, 1986, 100 Stat. 298, provided that:

“(a) IN GENERAL.—If—

“(1) an individual was receiving Federal supplemental compensation for the week which includes March 31, 1985, or a series of consecutive weeks which began with such week, and

“(2) such individual did not meet the consecutive-week eligibility requirements of the Federal Supple-

mental Compensation Act of 1982 [subtitle A (§§ 601-606) of title VI of Pub. L. 97-248, set out below] during any period of 1 or more subsequent weeks by reason of performing temporary disaster services described in subsection (e), weeks in such period shall be disregarded for purposes of the consecutive-week requirement of section 602(f)(2)(B) of such Act [section 602(f)(2)(B) of Pub. L. 97-248, set out below], and, notwithstanding the requirements of State law relating to the availability for work, the active search for work, or the refusal to accept work, such individual shall be entitled to payment of Federal supplemental compensation for each week of unemployment which is described in subsection (b) and for which a certification of unemployment is made by such individual in accordance with subsection (c).

“(b) WEEKS FOR WHICH PAYMENT SHALL BE MADE.—A week of unemployment for which payment shall be made under subsection (a) is a week which occurred during the period which commences with the first week beginning after the close of the period described in subsection (a)(2) and ends with the beginning of the first week in which the individual was employed after the close of such period.

“(c) CERTIFICATION.—The certification of unemployment referred to in subsection (a) shall be a certification—

“(1) that is made on a form provided by the State agency concerned and signed by the individual; and

“(2) that identifies the weeks of unemployment for which the individual is making the certification.

“(d) LIMITATION ON AMOUNT OF PAYMENT.—In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Federal Supplemental Compensation Act of 1982 [section 602(e) of Pub. L. 97-248, set out below] after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

“(e) DEFINITION.—For purposes of subsection (a), the term ‘temporary disaster services’ means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3, 1985, by the President of the United States under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].

“(f) MODIFICATION OF AGREEMENT.—(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act [Apr. 7, 1986], propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97-248, set out below] in order to carry out this section.

“(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982 [section 604(a) of Pub. L. 97-248, set out below]. For purposes of carrying out this paragraph, the term ‘this subtitle’ in such section 604(a) shall include this section.

“(g) EFFECTIVE DATE.—The provisions of this section shall apply to weeks beginning after March 31, 1985.”

#### AMORTIZATION PAYMENTS FOR STATES WITH INDEPENDENT RETIREMENT PLANS FROM FUNDS FOR INCREASED COSTS OF ADMINISTRATION OF UNEMPLOYMENT COMPENSATION LAWS; CHANGES IN STATE LAWS; INCREASED CLAIMS; SALARY COSTS

Pub. L. 99-88, title I, §100, Aug. 15, 1985, 99 Stat. 344, provided that: “Whenever funds are made available, now or hereafter, in this or any other Act for the administration of unemployment compensation laws to meet increased costs of administration resulting from changes in a State law or increases in the number of unemployment insurance claims filed and claims paid or increased salary costs resulting from changes in

State salary compensation plans embracing employees of the State generally over those upon which the State’s basic allocation was based, which cannot be provided for by normal budgetary adjustment, amortization payments for States which had independent retirement plans prior to 1980 in their State Employment Security Agencies and States agencies administering the State’s unemployment compensation law may be paid from such funds.”

#### ARRANGEMENTS TO PREVENT PAYMENTS OF UNEMPLOYMENT COMPENSATION TO RETIREES AND PRISONERS

Pub. L. 98-135, title II, §206, Oct. 24, 1983, 97 Stat. 861, provided that:

“(a) The Secretary of Labor, the Director of the Office of Personnel Management, and the Attorney General are directed to enter into arrangements to make available to the States, computer or other data regarding current and retired Federal employees and Federal prisoners so that States may review the eligibility of these individuals for unemployment compensation, and take action where appropriate.

“(b) The Secretary of Labor shall report to the Congress, prior to January 31, 1984, on arrangements which have been entered into under subsection (a), and any arrangements which could be entered into with other appropriate State agencies, for the purpose of ensuring that unemployment compensation is not paid to retired individuals or prisoners in violation of law. The report shall include any recommendations for further legislation which might be necessary to aid in preventing such payments.”

#### SHORT-TIME COMPENSATION

Pub. L. 112-96, title II, §§2162-2165, Feb. 22, 2012, 126 Stat. 173-178, provided that:

#### “SEC. 2162. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

##### “(a) PAYMENTS TO STATES.—

“(1) IN GENERAL.—Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)) under the provisions of the State law.

“(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary’s estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

##### “(3) LIMITATIONS ON PAYMENTS.—

“(A) GENERAL PAYMENT LIMITATIONS.—No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for a week of total unemployment.

“(B) EMPLOYER LIMITATIONS.—No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

##### “(b) APPLICABILITY.—

“(1) IN GENERAL.—Payments to a State under subsection (a) shall be available for weeks of unemployment—

“(A) beginning on or after the date of the enactment of this Act [Feb. 22, 2012]; and

“(B) ending on or before the date that is 3 years and 6 months after the date of the enactment of this Act.

“(2) THREE-YEAR FUNDING LIMITATION FOR COMBINED PAYMENTS UNDER THIS SECTION AND SECTION 2163.—States may receive payments under this section and section 2163 with respect to a total of not more than 156 weeks.

“(c) TWO-YEAR TRANSITION PERIOD FOR EXISTING PROGRAMS.—During any period that the transition provision under section 2161(a)(3) [of Pub. L. 112-96, set out as a note under section 3306 of this title] is applicable to a State with respect to a short-time compensation program, such State shall be eligible for payments under this section. Subject to paragraphs (1)(B) and (2) of subsection (b), if at any point after the date of the enactment of this Act the State enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State shall be eligible for payments under this section after the effective date of such enactment.

“(d) FUNDING AND CERTIFICATIONS.—

“(1) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

“(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

“(e) DEFINITIONS.—In this section:

“(1) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor.

“(2) STATE; STATE AGENCY; STATE LAW.—The terms ‘State’, ‘State agency’, and ‘State law’ have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note).

#### “SEC. 2163. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS.

“(a) FEDERAL-STATE AGREEMENTS.—

“(1) IN GENERAL.—Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State’s law does not provide for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

“(2) ABILITY TO TERMINATE.—Any State which is a party to an agreement under this section may, upon providing 30 days’ written notice to the Secretary, terminate such agreement.

“(b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

“(1) IN GENERAL.—Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

“(2) LIMITATIONS ON PLANS.—

“(A) GENERAL PAYMENT LIMITATIONS.—A short-time compensation plan approved by a State shall not permit the payment of short-time compensation to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for a week of total unemployment.

“(B) EMPLOYER LIMITATIONS.—A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

“(3) EMPLOYER PAYMENT OF COSTS.—Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State’s unemployment fund and shall not be used for purposes of calculating an employer’s contribution rate under section 3303(a)(1) of the Internal Revenue Code of 1986.

“(c) PAYMENTS TO STATES.—

“(1) IN GENERAL.—There shall be paid to each State with an agreement under this section an amount equal to—

“(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

“(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

“(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary’s estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

“(3) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

“(4) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

“(d) APPLICABILITY.—

“(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

“(A) beginning on or after the date on which such agreement is entered into; and

“(B) ending on or before the date that is 2 years and 13 weeks after the date of the enactment of this Act [Feb. 22, 2012].

“(2) TWO-YEAR FUNDING LIMITATION.—States may receive payments under this section with respect to a total of not more than 104 weeks.

“(e) SPECIAL RULE.—If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State—

“(1) shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law; and

“(2) subject to paragraphs (1)(B) and (2) of section 2162(b), shall be eligible to receive payments under section 2162 after the effective date of such State law.

“(f) DEFINITIONS.—In this section:

“(1) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor.

“(2) STATE; STATE AGENCY; STATE LAW.—The terms ‘State’, ‘State agency’, and ‘State law’ have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note).

#### “SEC. 2164. GRANTS FOR SHORT-TIME COMPENSATION PROGRAMS.

“(a) GRANTS.—

“(1) FOR IMPLEMENTATION OR IMPROVED ADMINISTRATION.—The Secretary shall award grants to States that enact short-time compensation programs (as defined in subsection (i)(2)) for the purpose of imple-

mentation or improved administration of such programs.

“(2) FOR PROMOTION AND ENROLLMENT.—The Secretary shall award grants to States that are eligible and submit plans for a grant under paragraph (1) for such States to promote and enroll employers in short-time compensation programs (as so defined).

“(3) ELIGIBILITY.—

“(A) IN GENERAL.—The Secretary shall determine eligibility criteria for the grants under paragraphs (1) and (2).

“(B) CLARIFICATION.—A State administering a short-time compensation program, including a program being administered by a State that is participating in the transition under the provisions of sections 301(a)(3) and 302(c) [probably means sections “2161(a)(3)” (26 U.S.C. 3306 note) and “2162(c)” of Pub. L. 112-96], that does not meet the definition of a short-time compensation program under section 3306(v) of the Internal Revenue Code of 1986 (as added by 211(a) [probably means “section 2161(a)”]), and a State with an agreement under section 2163, shall not be eligible to receive a grant under this section until such time as the State law of the State provides for payments under a short-time compensation program that meets such definition and such law.

“(b) AMOUNT OF GRANTS.—

“(1) IN GENERAL.—The maximum amount available for making grants to a State under paragraphs (1) and (2) shall be equal to the amount obtained by multiplying \$100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 903 of the Social Security Act (42 U.S.C. 1103) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2010, under the provisions of subsection (a) of such section.

“(2) AMOUNT AVAILABLE FOR DIFFERENT GRANTS.—Of the maximum incentive payment determined under paragraph (1) with respect to a State—

“(A) one-third shall be available for a grant under subsection (a)(1); and

“(B) two-thirds shall be available for a grant under subsection (a)(2).

“(c) GRANT APPLICATION AND DISBURSAL.—

“(1) APPLICATION.—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and complete with such information as the Secretary may require. In no case may the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2014.

“(2) NOTICE.—The Secretary shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary’s findings with respect to the requirements for a grant under paragraph (1) or (2) (or both) of subsection (a).

“(3) CERTIFICATION.—If the Secretary finds that the State law provisions meet the requirements for a grant under subsection (a), the Secretary shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund (as established in section 904(a) of the Social Security Act (42 U.S.C. 1104(a))) pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer to the State account within 7 days after receiving such certification.

“(4) REQUIREMENT.—No certification of compliance with the requirements for a grant under paragraph (1) or (2) of subsection (a) may be made with respect to any State whose—

“(A) State law is not otherwise eligible for certification under section 303 of the Social Security Act (42 U.S.C. 503) or approvable under section 3304 of the Internal Revenue Code of 1986; or

“(B) short-time compensation program is subject to discontinuation or is not scheduled to take effect within 12 months of the certification.

“(d) USE OF FUNDS.—The amount of any grant awarded under this section shall be used for the implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through—

“(1) the creation or support of rapid response teams to advise employers about alternatives to layoffs;

“(2) the provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and

“(3) the development or enhancement of systems to automate—

“(A) the submission and approval of plans; and

“(B) the filing and approval of new and ongoing short-time compensation claims.

“(e) ADMINISTRATION.—The Secretary is authorized to use 0.25 percent of the funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and short-time compensation programs.

“(f) RECOUPMENT.—The Secretary shall establish a process under which the Secretary shall recoup the amount of any grant awarded under paragraph (1) or (2) of subsection (a) if the Secretary determines that, during the 5-year period beginning on the first date that any such grant is awarded to the State, the State—

“(1) terminated the State’s short-time compensation program; or

“(2) failed to meet appropriate requirements with respect to such program (as established by the Secretary).

“(g) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Secretary, \$100,000,000 to carry out this section, to remain available without fiscal year limitation.

“(h) REPORTING.—The Secretary may establish reporting requirements for States receiving a grant under this section in order to provide oversight of grant funds.

“(i) DEFINITIONS.—In this section:

“(1) SECRETARY.—The term ‘Secretary’ means the Secretary of Labor.

“(2) SHORT-TIME COMPENSATION PROGRAM.—The term ‘short-time compensation program’ has the meaning given such term in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

“(3) STATE; STATE AGENCY; STATE LAW.—The terms ‘State’, ‘State agency’, and ‘State law’ have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91-373] (26 U.S.C. 3304 note).

“SEC. 2165. ASSISTANCE AND GUIDANCE IN IMPLEMENTING PROGRAMS.

“(a) IN GENERAL.—In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)), the Secretary of Labor (in this section referred to as the ‘Secretary’) shall—

“(1) develop model legislative language which may be used by States in developing and enacting such programs and periodically review and revise such model legislative language;

“(2) provide technical assistance and guidance in developing, enacting, and implementing such programs;

“(3) establish reporting requirements for States, including reporting on—

“(A) the number of estimated averted layoffs;

“(B) the number of participating employers and workers; and

“(C) such other items as the Secretary of Labor determines are appropriate.

“(b) MODEL LANGUAGE AND GUIDANCE.—The model language and guidance developed under subsection (a)

shall allow sufficient flexibility by States and participating employers while ensuring accountability and program integrity.

“(c) CONSULTATION.—In developing the model legislative language and guidance under subsection (a), and in order to meet the requirements of subsection (b), the Secretary shall consult with employers, labor organizations, State workforce agencies, and other program experts.”

Pub. L. 102-318, title IV, §401(b)-(d), July 3, 1992, 106 Stat. 299, which related to assistance in implementing short-time compensation programs, was repealed by Pub. L. 112-96, title II, §2161(b)(3), Feb. 22, 2012, 126 Stat. 172.

Pub. L. 97-248, title I, §194, Sept. 3, 1982, 96 Stat. 409, provided that:

“(a) It is the purpose of this section to assist States which provide partial unemployment benefits to individuals whose workweeks are reduced pursuant to an employer plan under which such reductions are made in lieu of temporary layoffs.

“(b)(1) The Secretary of Labor (hereinafter in this section referred to as the ‘Secretary’) shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs, and shall provide technical assistance to States to assist in developing, enacting, and implementing such short-time compensation program.

“(2) The Secretary shall conduct a study or studies for purposes of evaluating the operation, costs, effect on the State insured rate of unemployment, and other effects of State short-time compensation programs developed pursuant to this section.

“(3) This section shall be a three-year experimental provision, and the provisions of this section regarding guidelines shall terminate 3 years following the date of the enactment of this Act [Sept. 3, 1982].

“(4) States are encouraged to experiment in carrying out the purpose and intent of this section. However, to assure minimum uniformity, States are encouraged to consider requiring the provisions contained in subsections (c) and (d).

“(c) For purposes of this section, the term ‘short-time compensation program’ means a program under which—

“(1) individuals whose workweeks have been reduced pursuant to a qualified employer plan by at least 10 per centum will be eligible for unemployment compensation;

“(2) the amount of unemployment compensation payable to any such individual shall be a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

“(3) eligible employees may be eligible for short-time compensation or regular unemployment compensation, as needed; except that no employee shall be eligible for more than the maximum entitlement during any benefit year to which he or she would have been entitled for total unemployment, and no employee shall be eligible for short-time compensation for more than twenty-six weeks in any twelve-month period; and

“(4) eligible employees will not be expected to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but shall be available for their normal workweek.

“(d) For purposes of subsection (c), the term ‘qualified employer plan’ means a plan of an employer or of an employers’ association which association is party to a collective bargaining agreement (hereinafter referred to as ‘employers’ association’) under which there is a reduction in the number of hours worked by employees rather than temporary layoffs if—

“(1) the employer’s or employers’ association’s short-time compensation plan is approved by the State agency;

“(2) the employer or employers’ association certifies to the State agency that the aggregate reduc-

tion in work hours pursuant to such plan is in lieu of temporary layoffs which would have affected at least 10 per centum of the employees in the unit or units to which the plan would apply and which would have resulted in an equivalent reduction of work hours;

“(3) during the previous four months the work force in the affected unit or units has not been reduced by temporary layoffs of more than 10 per centum;

“(4) the employer continues to provide health benefits, and retirement benefits under defined benefit pension plans (as defined in section 3(35) of the Employee Requirement Income Security Act of 1974 [29 U.S.C. 1002(35)], to employees whose workweek is reduced under such plan as though their workweek had not been reduced; and

“(5) in the case of employees represented by an exclusive bargaining representative, that representative has consented to the plan.

The State agency shall review at least annually any qualified employer plan put into effect to assure that it continues to meet the requirements of this subsection and of any applicable State law.

“(e) Short-time compensation shall be charged in a manner consistent with the State law.

“(f) For purposes of this section, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

“(g)(1) The Secretary shall conduct a study or studies of State short-time compensation programs consulting with employee and employer representatives in developing criteria and guidelines to measure the following factors:

“(A) the impact of the program upon the unemployment trust fund, and a comparison with the estimated impact on the fund of layoffs which would have occurred but for the existence of the program;

“(B) the extent to which the program has protected and preserved the jobs of workers, with special emphasis on newly hired employees, minorities, and women;

“(C) the extent to which layoffs occur in the unit subsequent to initiation of the program and the impact of the program upon the entitlement to unemployment compensation of the employees;

“(D) where feasible, the effect of varying methods of administration;

“(E) the effect of short-time compensation on employers’ State unemployment tax rates, including both users and nonusers of short-time compensation, on a State-by-State basis;

“(F) the effect of various State laws and practices under those laws on the retirement and health benefits of employees who are on short-time compensation programs;

“(G) a comparison of costs and benefits to employees, employers, and communities from use of short-time compensation and layoffs;

“(H) the cost of administration of the short-time compensation program; and

“(I) such other factors as may be appropriate.

“(2) Not later than October 1, 1985, the Secretary shall submit to the Congress and to the President a final report on the implementation of this section. Such report shall contain an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary deems advisable, including recommendations as to necessary changes in the Statistical practices of the Department of Labor.”

#### FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Pub. L. 97-248, title VI, subtitle A (§§601-606), Sept. 3, 1982, 96 Stat. 702, as amended by Pub. L. 97-424, title V, §544(a), (d), Jan. 6, 1983, 96 Stat. 2196; Pub. L. 97-448, title III, §310(a), Jan. 12, 1983, 96 Stat. 2411; Pub. L. 98-21, title V, §§501, 502, 504, 505, Apr. 20, 1983, 97 Stat. 141, 144; Pub. L. 98-92, §1(a), Sept. 2, 1983, 97 Stat. 608; Pub. L. 98-118, §1, Oct. 11, 1983, 97 Stat. 803; Pub. L. 98-135, title I, §§101, 102, Oct. 24, 1983, 97 Stat. 857; Pub. L. 99-15, §1(a), (b), Apr. 4, 1985, 99 Stat. 37, known as the “Federal Supplemental Compensation Act of 1982”, au-

thorized States to enter into and participate in an agreement with the Secretary of Labor providing for States to make payments of Federal supplemental compensation for weeks beginning before Apr. 1, 1985, to eligible individuals who had exhausted their rights or had no right to regular compensation under State law.

MODIFICATION OF AGREEMENTS UNDER FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Pub. L. 99-15, §1(c), Apr. 4, 1985, 99 Stat. 37, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 4, 1985], propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97-248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [subtitle A of title VI of Pub. L. 97-248, set out above] in accordance with the amendments made by this Act [amending the Federal Supplemental Compensation Act of 1982]. Notwithstanding any other provision of law, if any State fails or refuses within the three-week period beginning on the date the Secretary of Labor proposes such modification to such State, to enter into such modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the close of such three-week period. Pending modification (or termination) of the agreement, States may pay Federal supplemental compensation in accordance with the amendments made by this Act for weeks beginning after March 31, 1985, and shall be reimbursed in accordance with the provisions of the Federal Supplemental Compensation Act of 1982."

APPLICATION OF FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982 WITH RESPECT TO WEEKS BEGINNING AFTER MARCH 31, 1983

Pub. L. 98-13, Mar. 29, 1983, 97 Stat. 54, provided: "That, with respect to weeks beginning after March 31, 1983, the Federal Supplemental Compensation Act of 1982 [subtitle A of title VI of Pub. L. 97-248, set out above] shall be applied as if the provisions contained in part A of title V of the conference report [H. Rept. No. 98-47] on the bill H.R. 1900 [part A (§§501-505) of title V of Pub. L. 98-21, Apr. 20, 1983, 97 Stat. 141-144, amending subtitle A of title VI of Pub. L. 97-248, set out above] were enacted into law on the date of the enactment of this Act [Mar. 29, 1983]."

TERMINATION OF FEDERAL-STATE SUPPLEMENTAL UNEMPLOYMENT COMPENSATION AGREEMENTS WITH STATES FAILING TO RENEGOTIATE

Pub. L. 97-424, title V, §544(c), Jan. 6, 1983, 96 Stat. 2197, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Jan. 6, 1983], propose to each State with which he has in effect an agreement under section 602 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 602 of Pub. L. 97-248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [sections 601 to 606 of Pub. L. 97-248, set out above] in accordance with the amendments made by this Act [amending section 602(e) of Pub. L. 97-248, set out above]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before such three-week period."

CERTIFICATION OF STATE UNEMPLOYMENT LAWS; EFFECTIVE DATES

Pub. L. 97-35, title XXIV, §2408(b), Aug. 13, 1981, 95 Stat. 880, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in paragraph (2)—

"(A) The amendments made by sections 2401 and 2402 [amending Pub. L. 91-373, set out below] shall be required to be included in State unemployment compensation laws for purposes of certifications under section 3304(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on October 31 of any taxable year after 1980; and

"(B) the amendments made by sections 2403 and 2404 [amending Pub. L. 91-373, set out below] shall be required to be included in such laws for purposes of such certifications on October 31 of any taxable year after 1981.

"(2)(A) In the case of any State the legislature of which—

"(i) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1981, and

"(ii) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1980' in paragraph (1)(A) shall be deemed to be '1981'.

"(B) In the case of any State the legislature of which—

"(i) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1982, and

"(ii) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1981' in paragraph (1)(B) shall be deemed to be '1982'."

Pub. L. 96-499, title X, §1025, Dec. 5, 1980, 94 Stat. 2660, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "On October 31 of any taxable year after 1980, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this subtitle [subtitle C of title X of Pub. L. 96-499, Dec. 5, 1980, 94 Stat. 2656, which enacted section 8509 of Title 5, Government Organization and Employees, and section 1109 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under this section and section 8509 of Title 5, and amended provisions set out as notes under this section] to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision."

TRANSFER OF FUNDS TO FEDERAL UNEMPLOYMENT TRUST FUND AS PREREQUISITE TO APPROVAL OF VIRGIN ISLANDS UNEMPLOYMENT COMPENSATION LAW

Pub. L. 94-566, title I, §116(g), Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act [42 U.S.C. 1104] of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code."

FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD

Pub. L. 94-566, title I, §121, Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided for payment of compensation for any week of unemployment beginning on or after Jan. 1, 1978, for services not covered by State unemployment compensation law during 1-year period ending Dec. 31,

1975, with the Secretary of Labor to pay to the unemployment fund of such State an amount equal to the Federal reimbursement.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974

Pub. L. 93-572, §§101-105, Dec. 31, 1974, 88 Stat. 1869-1872, as amended by Pub. L. 94-12, title VII, §701(a), Mar. 29, 1975, 89 Stat. 65; Pub. L. 94-45, title I, §§101(a)-(f), 102(a), 103(a), 106, June 30, 1975, 89 Stat. 236-239; Pub. L. 94-566, title I, §116(d)(3), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95-19, title I, §§101(a), 102(a)-(c), 103(a), 104(a), 105(a), 107(a), Apr. 12, 1977, 91 Stat. 39-42; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, known as the "Emergency Unemployment Compensation Act of 1974", provided that, for weeks ending before Jan. 31, 1978, qualified States could enter into agreements with the Secretary of Labor for the payment of emergency unemployment compensation to eligible individuals who had exhausted their rights to regular compensation under State law.

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION EXTENSION ACT OF 1977

Pub. L. 95-19, title I, §106, Apr. 12, 1977, 91 Stat. 42, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 12, 1977], propose to each State with which he has in effect an agreement under section 102 of the Emergency Compensation Act of 1974 [Pub. L. 93-572, set out above] a modification of such agreement designed to provide for the payment of emergency compensation under such Act in accordance with the amendments made by this title [enacting sections 102(h) and 105(b) of the Emergency Unemployment Compensation Act of 1974, amending sections 102(b)(2), (c)(3)(A)(ii), (e), (f)(2), 104(b), and 105(a) of that Act, and enacting provisions set out as notes under this section]. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposes such a modification of such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such 3-week period."

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

Pub. L. 94-566, title VI, §604, Oct. 20, 1976, 90 Stat. 2691, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Oct. 20, 1976], propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93-567, title II, §202, set out below] a modification of such agreement designed to provide for the payment of special unemployment assistance under such Act in accordance with the amendments made by sections 601, 602, and 603 of this title [set out as a Special Unemployment Assistance Programs note below]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such three-week period."

AGREEMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974 TO BE MODIFIED TO REFLECT AMENDMENT OF THE ACT BY EMERGENCY COMPENSATION AND SPECIAL UNEMPLOYMENT ASSISTANCE EXTENSION ACT OF 1975

Pub. L. 94-45, title I, §105, June 30, 1975, 89 Stat. 239, provided that: "The Secretary of Labor shall, at the

earliest practicable date after the date of the enactment of this Act [June 30, 1975], propose to each State with which he has in effect an agreement under section 102 of the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93-567, set out below] a modification of such agreement designed to provide for the payment of the emergency compensation benefits allowable under such Act by reason of the amendments made by this part [part A (§§101-106) of title I of Pub. L. 94-45, enacting and amending provisions set out as notes under this section]. Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any State fails or refuses, within the three-week period beginning on the date of the enactment of this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement."

AGREEMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974 TO BE MODIFIED TO REFLECT AMENDMENT OF THE ACT BY TAX REDUCTION ACT OF 1975

Pub. L. 94-12, title VII, §701(b), Mar. 29, 1975, 89 Stat. 66, provided that: "The Secretary of Labor shall, at the earliest practicable date after the enactment of this Act [Mar. 29, 1975], propose to each State with which he has in effect an agreement entered into pursuant to section 102 of the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93-572, set out above] a modification of such agreement designed to cause payments of emergency compensation thereunder to be made in the manner prescribed by such Act, as amended by subsection (a) of this section [amending section 102(e) of the Emergency Unemployment Compensation Act of 1974]. Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any such State shall fail or refuse, within a reasonable time after the date of the enactment of this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement."

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Pub. L. 94-566, title IV, §411, Oct. 20, 1976, 90 Stat. 2681, as amended by Pub. L. 95-19, title III, §303, Apr. 12, 1977, 91 Stat. 45; Pub. L. 96-84, §§1(a), (b), 2, 3(a), Oct. 10, 1979, 93 Stat. 653, 654, related to establishment, membership, powers, duties, etc., of the National Commission on Unemployment Compensation, and required a final report not later than July 1, 1980, respecting findings, conclusions, and recommendations, with termination of the Commission on the ninetieth day after the date of submission of the final report to the President.

SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAMS

Pub. L. 93-567, title II, §§201-224, Dec. 31, 1974, 88 Stat. 1850-1853, as amended by Pub. L. 94-45, title II, §§201-203, June 30, 1975, 89 Stat. 240-242; Pub. L. 94-444, §6(a), (b), Oct. 1, 1976, 90 Stat. 1481; Pub. L. 94-566, title VI, §§601(a), 602(a)-(d), 603(a), Oct. 20, 1976, 90 Stat. 2689-2691; Pub. L. 96-499, title X, §1021, Dec. 5, 1980, 94 Stat. 2656; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(21), (f)(15)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-422, 2681-431, established, with respect to weeks of unemployment ending before June 30, 1978, temporary Federal program of special unemployment assistance for workers who were unemployed during period of aggravated unemployment and who were not otherwise eligible for unemployment allowances under any other law, and provided for Federal reimbursement for unemployment



benefits paid on basis of public service employment for services performed in weeks before Dec. 5, 1980.

AGREEMENTS UNDER SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM TO BE MODIFIED TO REFLECT AMENDMENT OF PROGRAM BY EMERGENCY COMPENSATION AND SPECIAL UNEMPLOYMENT ASSISTANCE EXTENSION ACT OF 1975

Pub. L. 94-45, title II, §204(a), June 30, 1975, 89 Stat. 242, provided that: “The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [June 30, 1975], propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93-567, title II, set out above] a modification of such agreement designed to provide for the payment of the special unemployment assistance allowable under such Act by reason of the amendments made by section 201 [amending sections 206 and 208 of the Emergency Jobs and Unemployment Assistance Act of 1974]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date of the enactment of this Act [June 30, 1975], to enter into such a modification of any such agreement, the Secretary of Labor shall terminate such agreement.”

SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAMS; INDIVIDUALS PERFORMING SERVICES FOR EDUCATIONAL INSTITUTIONS OR AGENCIES

Pub. L. 94-32, title I, §101, June 12, 1975, 89 Stat. 178, provided in part that: “Funds appropriated by this Act [Second Supplemental Appropriations Act, 1975], or any other Act, for the payments of special unemployment assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93-567, title II, set out above] shall not be used for making such payments of assistance or waiting period credit, beginning after the date of enactment of this Act [June 12, 1975], to any individual who performs services in an instructional, research, or principal administrative capacity for an educational institution or agency with respect to any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such similar period) if—

“(1) such individual performed services in any such capacity for any educational institution or agency for the first of such academic years or terms; and

“(2) such individual has a contract to perform services in any such capacity for any educational institution or agency for the latter of such academic years or terms.”

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1971

Pub. L. 92-224, title II, §§201-206, Dec. 29, 1971, 85 Stat. 811-814, as amended by Pub. L. 92-329, §§1, 2(e), June 30, 1972, 86 Stat. 398; Pub. L. 93-368, §4(a), Aug. 7, 1974, 88 Stat. 420; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, known as the “Emergency Unemployment Compensation Act of 1971”, provided that, for weeks ending before Mar. 31, 1973, qualified States could enter into agreements with the Secretary of Labor for the payment of emergency unemployment compensation to eligible individuals who had exhausted their rights to regular compensation under State law.

FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Pub. L. 91-373, title II, Aug. 10, 1970, 84 Stat. 708, as amended by Pub. L. 92-599, title V, §501, Oct. 27, 1972, 86 Stat. 1326; Pub. L. 93-53, §5, July 1, 1973, 87 Stat. 137; Pub. L. 93-233, §20, Dec. 31, 1973, 87 Stat. 974; Pub. L. 93-256, §2, Mar. 28, 1974, 88 Stat. 53; Pub. L. 93-329, §2, June 30, 1974, 88 Stat. 288; Pub. L. 93-368, §3, Aug. 7, 1974, 88 Stat. 420; Pub. L. 93-572, §§106-108, Dec. 31, 1974, 88 Stat. 1872; Pub. L. 94-45, title I, §102(b), June 30, 1975, 89

Stat. 238; Pub. L. 94-566, title I, §116(d)(1), (2), title II, §212(a), title III, §311(a), (b), Oct. 20, 1976, 90 Stat. 2672, 2677, 2678; Pub. L. 96-364, title IV, §416(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 96-499, title X, §§1022(a), 1024(a), Dec. 5, 1980, 94 Stat. 2656, 2658; Pub. L. 97-35, title XXIV, §§2401(a), (b), 2402(a), 2403(a), 2404(a), (b), title XXV, §2505(b), Aug. 13, 1981, 95 Stat. 874, 875, 876, 884; Pub. L. 97-248, title I, §191(a), Sept. 3, 1982, 96 Stat. 407; Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1081; Pub. L. 98-21, title V, §522(a), Apr. 20, 1983, 97 Stat. 148; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-318, title II, §§201, 202(a)(1), (b)(1), July 3, 1992, 106 Stat. 295, 296; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111-312, title V, §502, Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112-78, title II, §201(a)(4), Dec. 23, 2011, 125 Stat. 1282; Pub. L. 112-96, title II, §§2123(c), 2181(a), Feb. 22, 2012, 126 Stat. 167, 179; Pub. L. 112-240, title V, §502(c), Jan. 2, 2013, 126 Stat. 2344, provided:

“SEC. 201. [Short Title] This title may be cited as the ‘Federal-State Extended Unemployment Compensation Act of 1970’.

“SEC. 202. [Payment of Extended Compensation]

“(a) [State Law Requirements] (1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a State law shall provide the payment of extended compensation shall be made, for any week of unemployment which begins in the individual’s eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

“(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

“(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] shall not be made to any individual for any week of unemployment in his eligibility period—

“(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c) [probably means subpar. (C)] or fails to apply for any suitable work to which he was referred by the State agency; or

“(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law—

“(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

“(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary).

if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.

“(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

“(i) begins with the week following the week in which such failure occurs, and

“(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) [probably means subsection (b)(1)(C)] for his benefit year.

“(C) For purposes of this paragraph, the term ‘suitable work’ means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

“(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

“(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

“(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) for his benefit year, plus

“(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to such individual for such week;

“(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

“(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

“(iv) if the position pays wages less than the higher of—

“(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. 206(a)(1)], without regard to any exemption; or

“(II) any applicable State or local minimum wage.

“(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

“(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

“(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

“(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986, a State law shall provide for referring applicants for benefits under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.

“(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

“(5) Notwithstanding the provisions of paragraph (2), an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which

exceed 40 times the individual's most recent weekly benefit amount or 1½ times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one or more of the foregoing methods of measuring employment and earnings shall be used in that State.

“(6) No payment shall be made under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] to any State in respect of any extended compensation or sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3), (4), and (5), extended compensation would not have been payable to such individual for such week.

“(7) Paragraphs (3) and (4) shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and no provision of State law in conformity with such paragraphs shall apply during such period.

“(b) [Individual's Compensation Accounts] (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

“(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

“(B) thirteen times his average weekly benefit amount, or

“(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

“(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

“(3)(A) Effective with respect to weeks beginning in a high unemployment period, paragraph (1) shall be applied by substituting—

“(i) ‘80 per centum’ for ‘50 per centum’ in subparagraph (A),

“(ii) ‘twenty’ for ‘thirteen’ in subparagraph (B), and

“(iii) ‘forty-six’ for ‘thirty-nine’ in subparagraph (C).

“(B) For purposes of subparagraph (A), the term ‘high unemployment period’ means any period during which an extended benefit period would be in effect if section 203(f)(1)(A)(i) were applied by substituting ‘8 percent’ for ‘6.5 percent’.

“(c) [Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect] (1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

“(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

“(B) an extended benefit period is not in effect for such week in such State.

“(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

“(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1986 shall not apply to any denial of compensation required under this subsection.

“SEC. 203. [Extended Benefit Period]

“(a) [Beginning and Ending] For purposes of this title, in the case of any State, an extended benefit period—

“(1) shall begin with the third week after the first week for which there is a State ‘on’ indicator; and

“(2) shall end with the third week after the first week for which there is a State ‘off’ indicator.

“(b) [Special Rules] (1) In the case of any State—

“(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

“(B) no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State.

“(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

“(c) [Eligibility Period] For purposes of this title, an individual’s eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

“(d) [State ‘On’ and ‘Off’ Indicators] For purposes of this section—

“(1) There is a State ‘on’ indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

“(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

“(B) equaled or exceeded 5 per centum.

“(2) There is a State ‘off’ indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State ‘on’ or ‘off’ indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure ‘5’ contained in subparagraph (B) thereof were ‘6’; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State ‘on’ indicator shall continue to be such a week and shall not be determined to be a week for which there is a State ‘off’ indicator. Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Dec. 17, 2010] (or, if later, the date established pursuant to State law), and ending on or before December 31, 2013, the State may by law provide that the determination of whether there has been a state [State] ‘on’ or ‘off’ indicator beginning or ending any extended benefit period shall be made under this subsection as if the word ‘two’ were ‘three’ in subparagraph (1)(A). For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

“(e) [Rate of Insured Unemployment; Covered Employment] (1) For purposes of subsection (d), the term ‘rate of insured unemployment’ means the percentage arrived at by dividing—

“(A) the average weekly number of individuals filing claims for regular compensation for weeks of un-

employment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

“(B) the average monthly covered employment for the specified period.

“(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

“(f) [Alternative Trigger] (1) Effective with respect to compensation for weeks of unemployment beginning after March 6, 1993, the State may by law provide that for purposes of beginning or ending any extended benefit period under this section—

“(A) there is a State ‘on’ indicator for a week if—

“(i) the average rate of total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

“(ii) the average rate of total unemployment in such State (seasonally adjusted) for the 3-month period referred to in clause (i) equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; and

“(B) there is a State ‘off’ indicator for a week if either the requirements of clause (i) or clause (ii) of subparagraph (A) are not satisfied.

Notwithstanding the provision of any State law described in this paragraph, any week for which there would otherwise be a State ‘on’ indicator shall continue to be such a week and shall not be determined to be a week for which there is a State ‘off’ indicator.

“(2) Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Dec. 17, 2010] (or, if later, the date established pursuant to State law), and ending on or before December 31, 2013, the State may by law provide that the determination of whether there has been a state [State] ‘on’ or ‘off’ indicator beginning or ending any extended benefit period shall be made under this subsection as if the word ‘either’ were ‘any’, the word ‘both’ were ‘all’, and the figure ‘2’ were ‘3’ in clause (1)(A)(ii).

“(3) For purposes of this subsection, determinations of the rate of total unemployment in any State for any period (and of any seasonal adjustment) shall be made by the Secretary.

“SEC. 204. [Payments to States]

“(a) [Amount Payable] (1) There shall be paid to each State an amount equal to one-half of the sum of—

“(A) the sharable extended compensation, and

“(B) the sharable regular compensation, paid to individuals under the State law.

“(2) No payment shall be made to any State under this subsection in respect of compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual’s eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, (C) paid for any week with respect to which such benefits are not payable by reason of section 233(d) [now 233(c)] of the Trade Act of 1974 [19 U.S.C. 2293(c)], or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount.

“(3) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which

section 3306(c)(7) of the Internal Revenue Code of 1986 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

“(b) [Sharable Extended Compensation] For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual’s eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

“(c) [Sharable Regular Compensation] For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

“(1) if such week is in such individual’s eligibility period (determined under section 203(c)), and

“(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine, forty-six in any case where section 202(b)(3)(A) applies[,] times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

“(d) [Payment on Calendar Month Basis] There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

“(e) [Certification] The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

“SEC. 205. [Definitions] For purposes of this title—

“(1) The term ‘compensation’ means cash benefits payable to individuals with respect to their unemployment.

“(2) The term ‘regular compensation’ means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

“(3) The term ‘extended compensation’ means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

“(4) The term ‘additional compensation’ means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

“(5) The term ‘benefit year’ means the benefit year as defined in the applicable State law.

“(6) The term ‘base period’ means the base period as determined under applicable State law for the benefit year.

“(7) The term ‘Secretary’ means the Secretary of Labor of the United States.

“(8) The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

“(9) The term ‘State agency’ means the agency of the State which administers its State law.

“(10) The term ‘State law’ means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1986.

“(11) The term ‘week’ means a week as defined in the applicable State law.

“SEC. 206. [Approval of State Laws] [This section amended section 3304(a) of the Internal Revenue Code by adding par. (11) thereof.]

“SEC. 207. [Effective Dates] (a) Except as provided in subsection (b)—

“(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

“(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

“(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1986, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act [Aug. 10, 1970].

“(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State ‘on’ indicator and the State ‘off’ indicator.

“(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

“(c) Section 3304(a)(11) of the Internal Revenue Code of 1986 (as added by section 206) shall not be a requirement for the State law of any State—

“(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

“(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.

“SEC. 208. [Authority to Conduct Self-Employment Assistance Programs] (a)(1) At the option of a State, for any weeks of unemployment beginning after the date of enactment of this section [Feb. 22, 2012], the State agency of the State may establish a self-employment assistance program, as described in subsection (b), to provide for the payment of extended compensation as self-employment assistance allowances to individuals who would otherwise satisfy the eligibility criteria under this title.

“(2) Subject to paragraph (3), the self-employment assistance allowance described in paragraph (1) shall be paid to an eligible individual from such individual’s extended compensation account, as described in section 202(b), and the amount in such account shall be reduced accordingly.

“(3)(A) Subject to subparagraph (B), for purposes of self-employment assistance programs established under this section and section 4001(j) of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252, set out above], an individual shall be provided with self-employment assistance allowances under such programs for a total of not greater than 26 weeks (referred to in this section as the ‘combined eligibility limit’).

“(B) For purposes of an individual who is participating in a self-employment assistance program established under this section and has not reached the combined eligibility limit as of the date on which such individual exhausts all rights to extended compensation

under this title, the individual shall be eligible to receive self-employment assistance allowances under a self-employment assistance program established under section 4001(j) of the Supplemental Appropriations Act, 2008 [Pub. L. 110-252, set out above], until such individual has reached the combined eligibility limit, provided that the individual otherwise satisfies the eligibility criteria described under title IV of such Act [set out above].

“(b) For the purposes of this section, the term ‘self-employment assistance program’ means a program as defined under section 3306(t) of the Internal Revenue Code of 1986, except as follows:

“(1) all references to ‘regular unemployment compensation under the State law’ shall be deemed to refer instead to ‘extended compensation under title II of the Federal-State Extended Unemployment Compensation Act of 1970’ [this note];

“(2) paragraph (3)(B) shall not apply;

“(3) clause (i) of paragraph (3)(C) shall be deemed to state as follows:

“(i) include any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance; and”;

“(4) the reference to ‘5 percent’ in paragraph (4) shall be deemed to refer instead to ‘1 percent’; and

“(5) paragraph (5) shall not apply.

“(c) In the case of an individual who is eligible to receive extended compensation under this title, such individual shall not receive self-employment assistance allowances under this section unless the State agency has a reasonable expectation that such individual will be entitled to at least 13 times the individual’s average weekly benefit amount of extended compensation and emergency unemployment compensation.

“(d)(1) An individual who is participating in a self-employment assistance program established under this section may elect to discontinue participation in such program at any time.

“(2) For purposes of an individual whose participation in a self-employment assistance program established under this section is terminated pursuant to subsection (a)(3) or who has discontinued participation in such program, if the individual continues to satisfy the eligibility requirements for extended compensation under this title, the individual shall receive extended compensation payments with respect to subsequent weeks of unemployment, to the extent that amounts remain in the account established for such individual under section 202(b).”

[Amendment by section 502(c) of Pub. L. 112-240 to section 203 of Pub. L. 91-373, set out above, effective as if included in the enactment of subtitle B of title II of Pub. L. 112-96, see section 502(d) of Pub. L. 112-240, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 2123(c) of Pub. L. 112-96 to section 203 of Pub. L. 91-373, set out above, effective as if included in the enactment of Pub. L. 112-78, see section 2123(d) of Pub. L. 112-96, set out following section 2005 of Pub. L. 111-5 above.]

[Amendment by section 201(a)(4) of Pub. L. 112-78 to section 203 of Pub. L. 91-373, set out above, effective as if included in the enactment of Pub. L. 111-312, see section 201(c) of Pub. L. 112-78, set out following section 2005 of Pub. L. 111-5 above.]

[Pub. L. 102-318, title II, §202(a)(2), July 3, 1992, 106 Stat. 296, provided that:

“[(A) IN GENERAL.—Notwithstanding any other provision of law, the amendment made by paragraph (1) [amending section 202(a)(5) of Pub. L. 91-373, set out above] shall apply for purposes of extended unemployment compensation and emergency unemployment compensation to weeks of unemployment beginning on or after the date of the enactment of this Act [July 3, 1992].

“[(B) WAIVER OF RECOVERY OF CERTAIN OVERPAYMENTS.—On and after the date of the enactment of this

Act, no repayment of any emergency unemployment compensation shall be required under section 105 of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended [formerly set out above]) if the individual would have been entitled to receive such compensation had the amendment made by paragraph (1) applied to all weeks beginning before the date of the enactment of this Act.”]

[Pub. L. 98-21, title V, §522(b), Apr. 20, 1983, 97 Stat. 148, provided that: “The amendment made by this section [amending section 202(a)(3)(A)(ii) of Pub. L. 91-373, set out above] shall become effective on the date of the enactment of this Act [Apr. 20, 1983].”]

[Pub. L. 97-248, title I, §191(b), Sept. 3, 1982, 96 Stat. 407, provided that:

“[(1) Except as provided in paragraph (2), the amendments made by this section [amending section 204(a)(2) of Pub. L. 91-373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after October 1, 1983.

“[(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to provide for rounding down of unemployment compensation amounts, the amendment made by this section [amending section 204(a)(2) of Pub. L. 91-373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods which begin on or after October 1, 1983, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Sept. 3, 1982], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term ‘session’ means a regular, special, budget, or other session of a State legislature.”]

[Pub. L. 97-35, title XXIV, §2401(c), Aug. 13, 1981, 95 Stat. 875, provided that: “The amendments made by this section [amending sections 203 and 204(a)(3), (4) of Pub. L. 91-373, set out above] shall apply to weeks beginning after the date of the enactment of this Act [Aug. 13, 1981].”]

[Pub. L. 97-35, title XXIV, §2402(b), Aug. 13, 1981, 95 Stat. 875, provided that: “The amendment made by subsection (a) [amending section 203(e)(1)(A) of Pub. L. 91-373, set out above] shall apply for purposes of determining whether there are State ‘on’ or ‘off’ indicators for weeks beginning after the date of the enactment of this Act [Aug. 13, 1981]. For purposes of making such determinations for such weeks, such amendment shall be deemed to be in effect for all weeks whether beginning before, on, or after such date of enactment.”]

[Pub. L. 97-35, title XXIV, §2403(b), Aug. 13, 1981, 95 Stat. 875, provided that: “The amendments made by subsection (a) [amending section 203(d) of Pub. L. 91-373, set out above] shall apply to weeks beginning after September 25, 1982.”]

[Pub. L. 97-35, title XXIV, §2404(c), Aug. 13, 1981, 95 Stat. 876, provided that: “The amendments made by this section [amending section 202(a)(5), (6) of Pub. L. 91-373, set out above] shall apply with respect to extended compensation and sharable regular compensation payable for weeks which begin after September 25, 1982.”]

[Amendment by sections 2401-2404 of Pub. L. 97-35 (amending Pub. L. 91-373, set out above) required to be included in State unemployment compensation laws for purposes of certifications, see section 2408(b) of Pub. L. 97-35, set out above.]

[Amendment by section 2505(b) of Pub. L. 97-35 (amending section 204(a)(2)(C) of Pub. L. 91-373, set out above) applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, and transitional provisions applicable, see section 2514 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 2291 of Title 19, Customs Duties.]

[Pub. L. 96-499, title X, §1022(b), Dec. 5, 1980, 94 Stat. 2656, provided that:

“[(1) Except as provided in paragraph (2), the amendments made by this section [amending section 204(a)(2)

of Pub. L. 91-373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after the date of the enactment of this Act [Dec. 5, 1980].

["(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to eliminate its current policy of paying regular compensation to an individual for his first week of otherwise compensable unemployment, the amendments made by this section [amending section 204(a)(2) of Pub. L. 91-373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning after the end of the first regularly scheduled session of the State legislature ending more than thirty days after the date of the enactment of this Act [Dec. 5, 1980]."]

[Pub. L. 96-499, title X, §1024(b), Dec. 5, 1980, 94 Stat. 2660, provided that: "The amendment made by this section [amending section 202(a) of Pub. L. 91-373, set out above] shall apply with respect to weeks of unemployment beginning after March 31, 1981."]

[Pub. L. 96-364, title IV, §416(b), Sept. 26, 1980, 94 Stat. 1311, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

["(1) IN GENERAL.—The amendment made by subsection (a) [amending subsec. 202(c) of Pub. L. 91-373, set out above] shall apply to weeks of unemployment beginning after October 1, 1980; except that such amendment shall not be a requirement of any State law under section 3304(a)(11) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any week which begins before June 1, 1981.

["(2) SPECIAL RULE FOR CERTAIN STATES.—In the case of any State the legislature of which does not meet in a regular session which begins during calendar year 1981 and before April 1, 1981, paragraph (1) shall be applied by substituting 'June 1, 1982' for 'June 1, 1981'."]

[Section 116(f)(1) of Pub. L. 94-566, set out as an Effective Date of 1976 Amendment note above, provided in part that the deletion of "the Virgin Islands or" from section 202(a)(1) of Pub. L. 91-373, set out above, and the insertion of "and the Virgin Islands" in section 205(8) thereof shall take effect on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of this title an unemployment compensation law submitted to him by the Virgin Islands for approval.]

[Pub. L. 94-566, title II, §212(b), Oct. 20, 1976, 90 Stat. 2677, provided that: "The amendment made by this section [enacting section 204(a)(4) of Pub. L. 91-373, set out above] shall apply with respect to compensation paid for weeks of unemployment beginning on or after January 1, 1979."]

[Pub. L. 94-566, title III, §311(c), Oct. 20, 1976, 90 Stat. 2679, provided that: "The amendment made by subsection (a) of this section [amending section 203(d) of Pub. L. 91-373, set out above] shall apply to weeks beginning after December 31, 1976, and the amendments made by subsection (b) of this section [amending section 203(e) of Pub. L. 91-373, set out above] shall apply to weeks beginning after March 30, 1977."]

**STUDY AND REPORT BY SECRETARY OF LABOR COVERING EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM AND SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM; REPORT ON OR BEFORE JAN. 1, 1977**

Pub. L. 94-45, title I, §104, June 30, 1975, 89 Stat. 238, provided that: "The Secretary of Labor shall conduct a study and review of the program established by the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93-572, set out above] and the program established under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93-567, title II, set out above] and shall submit to the Congress not later than January 1, 1977, a report on such study and review. Such study and review shall include—

"(1) the employment, economic, and demographic characteristics of individuals receiving benefits under either such program,

"(2) the needs of the long-term unemployed for job counseling, testing, referral and placement services, skill and apprenticeship training, career-related education programs, and public service employment opportunities, and

"(3) an examination of all other benefits to which individuals receiving benefits under either such program are eligible together with an investigation of important factors affecting unemployment, a comparison of the aggregate value of such other benefits plus benefits received under either such program with the amount of compensation received by such individuals in their most recent position of employment."

**LOANS TO UNEMPLOYMENT FUND OF VIRGIN ISLANDS**

Pub. L. 94-45, title III, §301, June 30, 1975, 89 Stat. 243, as amended by Pub. L. 94-354, July 12, 1976, 90 Stat. 888; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') may make loans to the Virgin Islands in such amounts as he determines to be necessary for the payment in any month of compensation under the unemployment compensation law of the Virgin Islands. A loan may be made under this subsection for the payment of compensation in any month only if—

"(1) the Governor of the Virgin Islands submits an application therefor no earlier than the first day of the preceding month; and

"(2) such application contains an estimate of the amount of the loan which will be required by the Virgin Islands for the payment of compensation in such month.

"(b) For purposes of this section—

"(1) an application for loan under subsection (a) shall be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the unemployment compensation law of the Virgin Islands as the Secretary deems necessary or relevant to the performance of his duties under this section;

"(2) the amount required by the Virgin Islands for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the unemployment fund of the Virgin Islands for the payment of compensation in such month; and

"(3) the term 'compensation' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

"(c) Any loan made under subsection (a) shall be repayable (without interest) not later than January 1, 1979. If after January 1, 1979, any portion of any such loan remains unpaid, the Virgin Islands shall pay interest thereon, until the loan is paid in full, at a rate equal to the rate of interest in effect under section 6621 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. If at some future date the Federal Unemployment Tax Act [section 3301 et seq. of this title] shall be made applicable to the Virgin Islands, then, any amount of principal or interest due on any such loan remaining unpaid on such date shall be treated, for purposes of section 3302(c)(3) of the Internal Revenue Code of 1986, as an advance made to the Virgin Islands under title XII of the Social Security Act [42 U.S.C. 1321 et seq.].

"(d) No loan may be made under subsection (a) for any month beginning after September 30, 1977. The aggregate of the loans which may be made under subsection (a) shall not exceed \$15,000,000.

"(e) There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out this section."

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

Pub. L. 86-778, title V, §543(b), 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 [26 U.S.C. 3304(a)(2)], 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 [26 U.S.C. 3304(a)(3)] and section 303(a)(4) of the Social Security Act [42 U.S.C. 503(a)(4)], 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.”

### § 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.

**[(c) 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 Transportation with respect to service performed 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 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 Transportation 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 Transportation 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.

**(j) Denial of credits in certain cases**

Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of

a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 445; Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135; Pub. L. 86-778, title V, §531(a), (b), Sept. 13, 1960, 74 Stat. 983; Pub. L. 91-373, title I, §123, Aug. 10, 1970, 84 Stat. 702; Pub. L. 94-455, title XIX, §§1903(a)(15), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 114-92, div. C, title XXXV, §3503, Nov. 25, 2015, 129 Stat. 1219.)

AMENDMENTS

2015—Subsecs. (g), (h)(2), (i). Pub. L. 114-92 substituted “Secretary of Transportation” for “Secretary of Commerce”.

1976—Subsec. (g). Pub. L. 94-455, §1903(a)(15)(A), struck out “on or after July 1, 1953,” after “respect to service performed”.

Subsec. (h). Pub. L. 94-455, 1903(a)(15)(B), struck out “on or after July 1, 1953, and” after “as to service performed”.

Subsec. (j). Pub. L. 94-455, §§1903(a)(15)(C), 1906(b)(13)(C), struck out “after December 31, 1971,” after “for any taxable year” and substituted “to the Secretary of the Treasury” for “to the Secretary”.

1970—Subsec. (j). Pub. L. 91-373 added subsec. (j).

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

Pub. L. 86-778, title V, §535, Sept. 13, 1960, 74 Stat. 985, provided that: “The amendments made by this part [part 3 (§§531-535) of title V of Pub. L. 86-778, enacting section 3308 and amending this section and section 3306 of this title] (other than the amendments made by subsections (e) and (f) of section 531 [amending sections 1361 and 1367 of Title 42, The Public Health and Welfare]) 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.” [The second sentence of section 535 was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 661.]



## EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

## APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR CO-OPERATIVES

Pub. L. 86-778, title V, §531(g), Sept. 13, 1960, 74 Stat. 984, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 203(b) of the Farm Credit Act of 1959, sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and sections 1501(a) and 1507(a) of the Social Security Act [sections 1361(a) and 1367 of Title 42, The Public Health and Welfare] 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—

**(1) In general**

The term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

**(2) Agricultural labor**

In the case of agricultural labor, the term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

**(3) Domestic service**

In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of \$1,000 or more for such service.

**(4) Special rule**

A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

**(b) Wages**

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) 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 \$7,000 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 a 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 \$7,000 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) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph 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;

[(3) Repealed. Pub. L. 98-21, title III, §324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(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),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), 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),

(E) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph 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;<sup>1</sup>

(G) under a cafeteria plan (within the meaning of section 125) 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

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof;<sup>2</sup>

(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

(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;

(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) Repealed. Pub. L. 98-21, title III, §324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(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 (determined without regard to section 274(n));

(10) 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 (i) death, or (ii) 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;

(11) remuneration for agricultural labor paid in any medium other than cash;

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

(13) 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, 129, 134(b)(4), or 134(b)(5);

(14) 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;

(15) 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;

(16) 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;

(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b);

(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d);

(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)) or under an employee stock purchase plan (as defined in section 423(b)), 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).

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treat-

<sup>1</sup> So in original. The semicolon probably should be a comma.

<sup>2</sup> So in original. The comma probably should be a semicolon.

ed for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (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 chapter.

**(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 (A) any service, of whatever nature, performed after 1954 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, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of \$1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(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 in the employ of an Indian tribe, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions or Indian tribes; 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 (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 (i) by a student who is enrolled and is regularly attending classes at such school,

college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(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 of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the 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);

(18) service described in section 3121(b)(20);

(19) Service<sup>3</sup> 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), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

(21) service performed by a person committed to a penal institution.

#### (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

<sup>3</sup> So in original. Probably should not be capitalized.

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 (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;

(2) the amounts specified by section 903(c)(2) or 903(d)(4) 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;<sup>2</sup>

(3) nothing in this subsection shall be construed to prohibit deducting any amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(4) amounts may be deducted from unemployment benefits and used to repay overpay-

ments as provided in section 303(g) of the Social Security Act;

(5) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined in subsection (v)); and

(6) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

**(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” has the meaning assigned to such term by section 3121(d), except that paragraph (4) and subparagraphs (B) and (C) of paragraph (3) shall not apply.

**(j) State, United States, and American employer**

For purposes of this chapter—

**(1) State**

The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

**(2) United States**

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

**(3) American employer**

The term “American employer” means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (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” has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

“(B) in the employ of a group of operators of farms (or a cooperative organization of

which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;”.

**[(D) 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 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 Transportation.

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 Transportation 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.

**(o) Special rule in case of certain agricultural workers**

**(1) Crew leaders who are registered or provide specialized agricultural labor**

For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

(A) if—

(i) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or

(ii) substantially all the members of such crew operate or maintain tractors,

mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

**(2) Other crew leaders**

For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

(A) such other person and not the crew leader shall be treated as the employer of such individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

**(3) Crew leader**

For purposes of this subsection, the term “crew leader” means an individual who—

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

**(p) Concurrent employment by two or more employers**

For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

**(q) Full time student**

For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

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

**(1) Certain employer contributions treated as wages**

Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term “wages”—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3), or

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

**(2) Treatment of certain nonqualified deferred compensation plans**

**(A) In general**

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

- (i) when the services are performed, or
- (ii) when there is no substantial risk of forfeiture of the rights to such amount.

**(B) Taxed only once**

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

**(C) Nonqualified deferred compensation plan**

For purposes of this paragraph, the term “nonqualified deferred compensation plan” means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

**(s) Tips treated as wages**

For purposes of this chapter, the term “wages” includes tips which are—

- (1) received while performing services which constitute employment, and
- (2) included in a written statement furnished to the employer pursuant to section 6053(a).

**(t) Self-employment assistance program**

For the purposes of this chapter, the term “self-employment assistance program” means a program under which—

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation,

as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals—

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

(C) are participating in self-employment assistance activities which—

- (i) include entrepreneurial training, business counseling, and technical assistance; and
- (ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

**(u) Indian tribe**

For purposes of this chapter, the term “Indian tribe” has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)),<sup>4</sup> and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

**(v) Short-time compensation program**

For purposes of this part,<sup>5</sup> the term “short-time compensation program” means a program under which—

(1) the participation of an employer is voluntary;

(2) an employer reduces the number of hours worked by employees in lieu of layoffs;

<sup>4</sup> See References in Text note below.

<sup>5</sup> So in original. This section is not contained in a part.

(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent), are not disqualified from unemployment compensation;

(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;

(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;

(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998)<sup>4</sup> to enhance job skills if such program has been approved by the State agency;

(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;

(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;

(9) the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws; and

(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.

(Aug. 16, 1954, ch. 736, 68A Stat. 447; Sept. 1, 1954, ch. 1212, §§1, 4(c), 68 Stat. 1130, 1135; Pub. L. 86-70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86-624, §18(d), July 12, 1960, 74 Stat. 416; Pub. L. 86-778, title V, §§531(c), 532-534, 543(a), Sept. 13, 1960, 74 Stat. 983, 984, 986; Pub. L. 87-256, §110(f), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87-792, §7(k), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88-650, §4(c), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 90-248, title V, §504(b), Jan. 2, 1968, 81 Stat. 935; Pub. L. 91-53, §1, Aug. 7, 1969, 83 Stat. 91; Pub. L. 91-373, title I, §§101(a), 102(a), 103(a), 105(a), (b), 106(a), title III, §302, Aug. 10, 1970, 84 Stat. 696, 697, 699, 700, 713; Pub. L. 94-455, title XIX, §§1903(a)(16),

1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1810, 1834; Pub. L. 94-566, title I, §§111 (a), (b), 112(a), 113(a), 114(a), 116(b), title II, §211(a), Oct. 20, 1976, 90 Stat. 2667-2669, 2672, 2676; Pub. L. 95-216, title III, §314(b), Dec. 20, 1977, 91 Stat. 1536; Pub. L. 95-472, §3(a), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95-600, title I, §164(b)(2), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 96-84, §4(a), (b), Oct. 10, 1979, 93 Stat. 654; Pub. L. 96-222, title I, §101(a)(10)(B)(ii), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96-499, title XI, §1141(b), Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97-34, title I, §124(e)(2)(A), title VIII, §822(a), Aug. 13, 1981, 95 Stat. 200, 351; Pub. L. 97-248, title II, §§271(a), 276(a)(1), (b)(1), (2), 277, Sept. 3, 1982, 96 Stat. 554, 558, 559; Pub. L. 98-21, title III, §§324(b)(1)-(4)(B), 327(c), 328(c), Apr. 20, 1983, 97 Stat. 123, 124, 127, 128; Pub. L. 98-135, title II, §§201(a), 202, Oct. 24, 1983, 97 Stat. 860; Pub. L. 98-369, div. A, title IV, §491(d)(37), title V, §531(d)(3), div. B, title VI, §2661(o)(4), July 18, 1984, 98 Stat. 851, 884, 1159; Pub. L. 99-272, title XII, §12401(b)(2), title XIII, §13303(a), Apr. 7, 1986, 100 Stat. 297, 327; Pub. L. 99-509, title IX, §9002(b)(2)(B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99-514, title I, §122(e)(3), title XI, §§1108(g)(8), 1151(d)(2)(B), title XVIII, §§1884(3), 1899A(44), (45), Oct. 22, 1986, 100 Stat. 2112, 2435, 2505, 2919, 2961; Pub. L. 99-595, Oct. 31, 1986, 100 Stat. 3348; Pub. L. 100-647, title I, §§1001(d)(2)(C)(iii), (g)(4)(B)(ii), 1011B(a) (22)(C), (23)(A), 1018(u)(50), title VIII, §8016(a)(3)(B), Nov. 10, 1988, 102 Stat. 3351, 3352, 3486, 3593, 3792; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 102-318, title III, §303(a), title IV, §401(a)(2), title V, §521(b)(35), July 3, 1992, 106 Stat. 297, 298, 312; Pub. L. 103-182, title V, §507(a), (b)(2), Dec. 8, 1993, 107 Stat. 2153, 2154; Pub. L. 103-296, title III, §320(a)(1)(E), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103-465, title VII, §702(c)(2), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104-188, title I, §§1203(a), 1421(b)(8)(C), 1704(t)(10), Aug. 20, 1996, 110 Stat. 1773, 1798, 1888; Pub. L. 104-191, title III, §301(c)(2)(B), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105-33, title V, §5406(a), Aug. 5, 1997, 111 Stat. 605; Pub. L. 106-554, §1(a)(7) [title I, §166(a), (d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-627; Pub. L. 107-147, title II, §209(d)(1), Mar. 9, 2002, 116 Stat. 33; Pub. L. 108-121, title I, §106(b)(3), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108-173, title XII, §1201(d)(2)(B), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108-357, title II, §251(a)(3), title III, §320(b)(3), Oct. 22, 2004, 118 Stat. 1458, 1473; Pub. L. 108-375, div. A, title V, §585(b)(2)(C), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 110-245, title I, §115(b), June 17, 2008, 122 Stat. 1636; Pub. L. 112-96, title II, §2161(a)(1), (b)(1)(B), Feb. 22, 2012, 126 Stat. 171, 172; Pub. L. 113-295, div. A, title II, §221(a)(19)(B)(vi), Dec. 19, 2014, 128 Stat. 4040; Pub. L. 114-92, div. C, title XXXV, §3503, Nov. 25, 2015, 129 Stat. 1219.)

#### REFERENCES IN TEXT

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Subchapter C of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c), was comprised of sections 1600 to 1611 of former Title 26, Internal Revenue Code. Subchapter C of chapter 9 was repealed by section 7851(a)(3) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title. See, also, section 7851(e) of this



title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, referred to in subsec. (c)(1)(B), are classified to sections 1184(c) and 1101(a)(15)(H), respectively, of Title 8, Aliens and Nationality.

Sections 303(g), 903(c)(2), (d)(4), and 904(a) of the Social Security Act, referred to in subsecs. (f)(2), (4) and (t)(5), are classified to sections 503(g), 1103(c)(2), (d)(4), and 1104(a), respectively, of Title 42, The Public Health and Welfare.

The Migrant and Seasonal Agricultural Worker Protection Act, referred to in subsec. (o)(1)(A)(i), is Pub. L. 97-470, Jan. 14, 1983, 96 Stat. 2584, as amended, which is classified generally to chapter 20 (§1801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 29 and Tables.

Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), referred to in subsec. (u), was classified to section 450b(e) of Title 25, Indians, prior to editorial reclassification as section 5304(e) of Title 25.

The Workforce Investment Act of 1998, referred to in subsec. (v)(6), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and was repealed by Pub. L. 113-128, title V, §§506, 511(a), July 22, 2014, 128 Stat. 1703, 1705, effective July 1, 2015. Pursuant to section 3361(a) of Title 29, Labor, references to a provision of the Workforce Investment Act of 1998 are deemed to refer to the corresponding provision of the Workforce Innovation and Opportunity Act, Pub. L. 113-128, July 22, 2014, 128 Stat. 1425, effective July 1, 2015. For complete classification of the Workforce Investment Act of 1998 to the Code, see Tables. For complete classification of the Workforce Innovation and Opportunity Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

#### AMENDMENTS

2015—Subsec. (n). Pub. L. 114-92 substituted “Secretary of Transportation” for “Secretary of Commerce” in par. (2) and concluding provisions.

2014—Subsec. (b)(12). Pub. L. 113-295 struck out par. (12) 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 (relating to amounts received under qualified group legal services plans);”.

2012—Subsec. (f)(5). Pub. L. 112-96, §2161(b)(1)(B)(i), added par. (5) and struck out former par. (5) relating to short-time compensation which read as follows: “amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and”. Former par. (5) relating to self-employment assistance program redesignated (6).

Subsec. (f)(6). Pub. L. 112-96, §2161(b)(1)(B)(ii), redesignated par. (5) relating to self-employment assistance program as (6).

Subsec. (v). Pub. L. 112-96, §2161(a)(1), added subsec. (v).

2008—Subsec. (b)(20). Pub. L. 110-245 added par. (20).

2004—Subsec. (b)(13). Pub. L. 108-375 substituted “134(b)(4), or 134(b)(5)” for “or 134(b)(4)”.

Subsec. (b)(16). Pub. L. 108-357, §320(b)(3), inserted “108(f)(4),” after “74(c),”.

Subsec. (b)(19). Pub. L. 108-357, §251(a)(3), added par. (19).

2003—Subsec. (b)(13). Pub. L. 108-121 substituted “, 129, or 134(b)(4)” for “or 129”.

Subsec. (b)(18). Pub. L. 108-173 added par. (18).

2002—Subsec. (f)(2). Pub. L. 107-147 inserted “or 903(d)(4)” before “of the Social Security Act”.

2000—Subsec. (c)(7). Pub. L. 106-554, §1(a)(7) [title I, §166(a)], inserted “or in the employ of an Indian tribe,” after “service performed in the employ of a State, or any political subdivision thereof,” and “or Indian tribes” after “wholly owned by one or more States or political subdivisions”.

Subsec. (u). Pub. L. 106-554, §1(a)(7) [title I, §166(d)], added subsec. (u).

1997—Subsec. (c)(21). Pub. L. 105-33 added par. (21).

1996—Subsec. (b)(5)(H). Pub. L. 104-188, §1421(b)(8)(C), added subpar. (H).

Subsec. (b)(17). Pub. L. 104-191 added par. (17).

Subsec. (c)(1)(B). Pub. L. 104-188, §1203(a), struck out “before January 1, 1995,” after “labor performed”.

Subsec. (k). Pub. L. 104-188, §1704(t)(10), inserted a period at end.

1994—Subsec. (c)(19). Pub. L. 103-296 substituted “(J), (M), or (Q)” for “(J), or (M)” wherever appearing.

Subsec. (f)(3) to (5). Pub. L. 103-465 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5) relating to payment of short-time compensation, respectively.

1993—Subsec. (f)(5). Pub. L. 103-182, §507(b)(2), added par. (5).

Subsec. (t). Pub. L. 103-182, §507(a), added subsec. (t).

1992—Subsec. (c)(1)(B). Pub. L. 102-318, §303(a), substituted “1995” for “1993”.

Subsec. (f)(4). Pub. L. 102-318, §401(a)(2), added par. (4).

Subsec. (r)(1)(A). Pub. L. 102-318, §521(b)(35), substituted “402(e)(3)” for “402(a)(8)”.

1989—Subsec. (t). Pub. L. 101-140 amended this section to read as if amendments by Pub. L. 100-647, §1011B(a)(22)(C), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5)(G). Pub. L. 100-647, §1011B(a)(23)(A), 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 “section 125”.

Subsec. (b)(9). Pub. L. 100-647, §1001(g)(4)(B)(ii), inserted “(determined without regard to section 274(n))” after “section 217”.

Subsec. (c)(1)(B). Pub. L. 100-647, §1018(u)(50), amended Pub. L. 99-272, §13303(a), see 1986 Amendment notes below.

Subsec. (c)(19). Pub. L. 100-647, §1001(d)(2)(C)(iii), substituted “(F), (J), or (M)” for “(F) or (J)” in three places.

Subsec. (i). Pub. L. 100-647, §8016(a)(3)(B), substituted “paragraph (4) and subparagraphs (B) and (C) of paragraph (3)” for “paragraph (3) and subparagraphs (B) and (C) of paragraph (4)”.

Subsec. (t). Pub. L. 100-647, §1011B(a)(22)(C), added subsec. (t) relating to benefits provided under certain employee benefit plans.

1986—Subsec. (b)(2)(A). Pub. L. 99-514, §1899A(44), substituted “workmen’s compensation” for “workman’s compensation”.

Subsec. (b)(5)(C). Pub. L. 99-514, §1108(g)(8), added subpar. (C) and struck out former subpar. (C) which read as follows: “under a simplified employee pension 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) for such payment.”.

Subsec. (b)(5)(G). Pub. L. 99-514, §1151(d)(2)(B), added subpar. (G).

Subsec. (b)(13). Pub. L. 99-514, §1899A(45), substituted a semicolon for a comma.

Subsec. (b)(16). Pub. L. 99-514, §122(e)(3), inserted reference to section 74(c).

Subsec. (c)(1)(B). Pub. L. 99-595 substituted “January 1, 1993” for “January 1, 1988”.

Pub. L. 99-272, §13303(a), as amended by Pub. L. 100-647, §1018(u)(50), substituted “January 1, 1988” for “January 1, 1986”.

Subsec. (f)(3). Pub. L. 99-272, §12401(b)(2), added par. (3).

Subsec. (i). Pub. L. 99-509 substituted “paragraph (3) and subparagraphs (B) and (C) of paragraph (4)” for “subparagraphs (B) and (C) of paragraph (3)”.

Subsec. (o)(1)(A)(i). Pub. L. 99-514, §1884(3), substituted “Migrant and Seasonal Agricultural Worker Protection Act” for “Farm Labor Contractor Registration Act of 1963”.

1984—Subsec. (b). Pub. L. 98-369, §531(d)(3)(A), in provisions preceding par. (1), inserted “(including benefits)”.

Subsec. (b)(5)(C) to (G). Pub. L. 98-369, §491(d)(37), struck out subpar. (C) which provided: “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),” and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (b)(16). Pub. L. 98-369, §531(d)(3)(B), added par. (16).

Subsec. (r)(1)(B). Pub. L. 98-369, §2661(o)(4), substituted “section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)” for “section 414(h)(2)”.

Subsec. (s). Pub. L. 98-369, §1073(a), added subsec. (s).

1983—Subsec. (b). Pub. L. 98-21, §327(c)(4), added sentence at end providing that nothing in the regulations prescribed for purposes of chapter 24 (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 regulations prescribed for purposes of this chapter.

Pub. L. 98-21, §324(b)(4)(B), added sentence at end providing that, except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of parenthetical text contained in subpar. (A) of par. (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

Subsec. (b)(2). Pub. L. 98-21, §324(b)(3)(A), (4)(A), struck out “(A) retirement or”, redesignated subpars. (B) to (D) as (A) to (C), respectively, and in subpar. (A), as so redesignated, substituted “sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term ‘wages’ only payments which are received under a workman’s compensation law)” for “sickness or accident disability”.

Subsec. (b)(3). Pub. L. 98-21, §324(b)(3)(B), struck out par. (3) 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. (b)(5)(D). Pub. L. 98-21, §328(c), substituted “section 219(b)(2)” for “section 219”.

Subsec. (b)(5)(E) to (G). Pub. L. 98-21, §324(b)(2), added subpars. (E) to (G).

Subsec. (b)(8). Pub. L. 98-21, §324(b)(3)(B), struck out par. (8) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained the age of 65, if he did not work for the employer in the period for which such payment was made.

Subsec. (b)(10)(A). Pub. L. 98-21, §324(b)(3)(C), struck out cl. (iii) which related to retirement after attaining an age specified in the plan referred to in subpar. (B) or in a pension plan of the employer.

Subsec. (b)(14). Pub. L. 98-21, §327(c)(1)–(3), added par. (14).

Subsec. (b)(15). Pub. L. 98-135, §201(a), added par. (15).

Subsec. (c)(1)(B). Pub. L. 98-135, §202, substituted “1986” for “1984”.

Subsec. (r). Pub. L. 98-21, §324(b)(1), added subsec. (r).

1982—Subsec. (b)(1). Pub. L. 97-248, §271(a), substituted “\$7,000” for “\$6,000” wherever appearing.

Subsec. (c)(1)(B). Pub. L. 97-248, §277, substituted “1984” for “1982”.

Subsec. (c)(10)(C). Pub. L. 97-248, §276(a)(1), struck out “under the age of 22” after “service performed by an individual”.

Subsec. (c)(20). Pub. L. 97-248, §276(b)(1), added par. (20).

Subsec. (q). Pub. L. 97-248, §276(b)(2), added subsec. (q).

1981—Subsec. (b)(13). Pub. L. 97-34, §124(e)(2)(A), substituted “section 127 or 129” for “section 127”.

Subsec. (c)(18), (19). Pub. L. 97-34, §822(a), added par. (18) and redesignated former par. (18) as (19).

1980—Subsec. (b)(5)(D). Pub. L. 96-222 added subpar. (D).

Subsec. (b)(6). Pub. L. 96-499 struck out “(or the corresponding section of prior law)” after “section 3101” in subpar. (A) and inserted “with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor” following subpar. (B).

1979—Subsec. (c)(1)(A). Pub. L. 96-84, §4(b), substituted “including labor performed by an alien” for “not taking into account labor performed before January 1, 1980, by an alien” in parenthetical text of cls. (i) and (ii).

Subsec. (c)(1)(B). Pub. L. 96-84, §4(a), substituted “January 1, 1982” for “January 1, 1980”.

1978—Subsec. (b)(12). Pub. L. 95-472 added par. (12).

Subsec. (b)(13). Pub. L. 95-600 added par. (13).

1977—Subsec. (p). Pub. L. 95-216 added subsec. (p).

1976—Subsec. (a). Pub. L. 94-566, §114(a), redesignated existing provisions, consisting of an introductory phrase and pars. (1) and (2), as par. (1), consisting of an introductory phrase and subpars. (A) and (B), inserted provisions following subpar. (B) as so redesignated, and added pars. (2), (3), and (4).

Subsec. (b)(1). Pub. L. 94-566, §211(a), substituted “\$6,000” for “\$4,200” wherever appearing.

Subsec. (b)(11). Pub. L. 94-566, §111(a), added par. (11).

Subsec. (c). Pub. L. 94-566, §116(b)(1), struck out “or in the Virgin Islands” after “agreement relating to unemployment compensation” in parenthetical provisions of cl. (B) preceding par. (1).

Subsec. (c)(1). Pub. L. 94-566, §111(b), inserted “unless” after “subsection (k)” and added subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 94-566, §113(a), inserted “unless performed for a person who paid cash remuneration of \$1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year” after “sorority”.

Subsec. (c)(9). Pub. L. 94-455, §1903(a)(16)(A), struck out “52 Stat. 1094, 1095;” before “45 U.S.C. 351”.

Subsec. (c)(12)(B). Pub. L. 94-455, §1906(b)(13)(C), substituted “to the Secretary of the Treasury” for “to the Secretary”.

Subsec. (c)(18). Pub. L. 94-455, §1903(a)(16)(B), inserted “(8 U.S.C. 1101(a)(15)(F) or (J))” after “Immigration and Nationality Act, as amended”.

Subsec. (f). Pub. L. 94-455, §1903(a)(16)(C), struck out “49 Stat. 640; 52 Stat. 1104, 1105;” before “42 U.S.C. 1104”.

Subsec. (j). Pub. L. 94-566, §116(b)(2), inserted reference to the Virgin Islands in pars. (1) and (2) and in provisions following par. (3).

Subsec. (n). Pub. L. 94-455, §1903(a)(16)(D), struck out “on or after July 1, 1953,” after “service performed”.

Subsec. (o). Pub. L. 94-566, §112(a), added subsec. (o).

1970—Subsec. (a). Pub. L. 91-373, §101(a), expanded definition of “employer” by reducing from 4 to 1 the number of individuals which a person had to employ on each of some 20 days during the calendar year or the preceding calendar year in order to qualify as an employer and inserted provisions making a person an employer who paid wages of \$1,500 or more during any calendar quarter in the calendar year or the preceding calendar year.

Subsec. (b)(1). Pub. L. 91-373, §302, substituted “\$4,200” for “\$3,000”.

Subsec. (c). Pub. L. 91-373, §105(a), inserted reference to service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer.

Subsec. (c)(10). Pub. L. 91-373, §106(a), designated existing provisions of subpar. (B) as cl. (i) thereof and added cl. (ii) of subpar. (B) and subpars. (C) and (D).

Subsec. (i). Pub. L. 91-373, §102(a), substituted meaning assigned “employee” by section 3121(d) of this title, except that subpars. (B) and (C) of par. (3) were not applicable, as meaning of “employee” for purposes of this chapter for a definition of “employee” as persons including officers of corporations but not including inde-

pendent contractors under common law rules or persons not employees under such rules.

Subsec. (j)(3). Pub. L. 91-373, §105(b), inserted definition of “American employer”.

Subsec. (k). Pub. L. 91-373, §103(a), substituted as definition of “agricultural labor” a simple reference to that term as defined, with a minor exception, in section 3121 of this title for a full definition of the term, the result of which, in view of the substance of section 3121, excluded from the definition of agricultural labor services performed in connection with the production or harvesting of maple sirup, maple sugar, or mushrooms, or the hatching of poultry unless performed on a farm, and provided a new series of tests to determine whether the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering agricultural or horticultural commodities constitute agricultural labor.

1969—Subsec. (a). Pub. L. 90-53 made status of employer depend also on employment during preceding taxable year.

1968—Subsec. (b)(10). Pub. L. 90-248 added par. (10).

1964—Subsec. (b)(9). 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 par. (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 “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, struck out provisions which excepted from definition of “employment” service in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association which is preformed 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 struck out “Hawaii” from definition of “State”, defined “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 struck out “Hawaii, and” before “the District of Columbia”.

Subsec. (m). Pub. L. 86-778, §532(c), included aircraft in heading and defined “American aircraft”.

1959—Subsec. (j). Pub. L. 86-70 struck out “Alaska,” before “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 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2012 AMENDMENT; TRANSITION PROVISION

Pub. L. 112-96, title II, §2161(a)(2), (3), Feb. 22, 2012, 126 Stat. 172, provided that:

“(2) EFFECTIVE DATE.—Subject to paragraph (3), the amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Feb. 22, 2012].

“(3) TRANSITION PERIOD FOR EXISTING PROGRAMS.—In the case of a State that is administering a short-time compensation program as of the date of the enactment of this Act and the State law cannot be administered consistent with the amendment made by paragraph (1), such amendment shall take effect on the earlier of—

“(A) the date the State changes its State law in order to be consistent with such amendment; or

“(B) the date that is 2 years and 6 months after the date of the enactment of this Act.”

#### 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 this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108-375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108-375, set out as a note under section 134 of this title.

Amendment by section 251(a)(3) of Pub. L. 108-357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108-357, set out as a note under section 421 of this title.

Amendment by section 320(b)(3) of Pub. L. 108-357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108-357, set out as a note under section 108 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENTS

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

Amendment by Pub. L. 108-121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT; TRANSITION RULE

Pub. L. 106-554, §1(a)(7) [title I, §166(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, provided that:

“(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 3309 of this title] shall apply to service performed on or after the date of the enactment of this Act [Dec. 21, 2000].

“(2) TRANSITION RULE.—For purposes of the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], service performed in the employ of an Indian tribe (as defined in section 3306(u) of the Internal Revenue Code of 1986 (as added by this section)) shall not be treated as em-

ployment (within the meaning of section 3306 of such Code) if—

“(A) it is service which is performed before the date of the enactment of this Act [Dec. 21, 2000] and with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid, and

“(B) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, §5406(b), Aug. 5, 1997, 111 Stat. 605, provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after January 1, 1994.”

#### EFFECTIVE DATE OF 1996 AMENDMENTS

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

Pub. L. 104-188, title I, §1203(b), Aug. 20, 1996, 110 Stat. 1773, provided that: “The amendment made by subsection (a) [amending this section] shall apply to services performed after December 31, 1994.”

Amendment by section 1421(b)(8)(C) 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 this title.

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103-465, set out as a note under section 3304 of this title.

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-182, title V, §507(e), Dec. 8, 1993, 107 Stat. 2154, as amended by Pub. L. 105-306, §3, Oct. 28, 1998, 112 Stat. 2926, provided that: “The provisions of this section [amending this section, section 3304 of this title, and section 503 of Title 42, The Public Health and Welfare, and enacting provisions set out below] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 8, 1993].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(35) of Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

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

#### EFFECTIVE DATE OF 1988 AMENDMENT

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

Pub. L. 100-647, title I, §1018(u)(50), Nov. 10, 1988, 102 Stat. 3593, provided that the amendment made by that section is effective Apr. 7, 1986.

Amendment by sections 1001(d)(2)(C)(iii), (g)(4)(B)(ii), and 1011B(a)(23)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 8016(a)(3)(B) of Pub. L. 100-647 effective Nov. 10, 1988, except that any amendment to a

provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100-647, set out as a note under section 3111 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(3) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(8) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99-514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(B) 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 this title.

Amendment by Pub. L. 99-509 effective, except as otherwise provided, with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99-509, set out as a note under section 418 of Title 42.

Amendment by Pub. L. 99-272 applicable to recoveries made on or after Apr. 7, 1986, and applicable with respect to overpayments made before, on, or after such date, see section 12401(c) of Pub. L. 99-272, set out as a note under section 503 of Title 42.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(37) 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 this title.

Amendment by section 531(d)(3) 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 this title.

Pub. L. 98-369, div. A, title X, §1073(b), July 18, 1984, 98 Stat. 1053, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect on January 1, 1986.

“(2) EXCEPTION FOR CERTAIN STATES.—In the case of any State the legislature of which—

“(A) did not meet in a regular session which begins during 1984 and after the date of the enactment of this Act [July 18, 1984], and

“(B) did not meet in a session which began before the date of the enactment of this Act and remained in session for at least 25 calendar days after such date of enactment,

the amendment made by subsection (a) shall take effect on January 1, 1987.”

Pub. L. 98-369, div. B, title VI, §2661(o)(4), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective Jan. 1, 1985.

#### EFFECTIVE DATE OF 1983 AMENDMENTS

Pub. L. 98-135, title II, §201(b), Oct. 24, 1983, 97 Stat. 860, provided that: “The amendments made by subsection (a) [amending this section] shall apply to remuneration paid after the date of the enactment of this Act [Oct. 24, 1983].”

Amendment by section 324(b)(1)–(4)(B) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1984, 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 this title.

Amendment by section 327(c)(1)–(3) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, see section 327(d)(3) of Pub. L. 98–21, as amended, set out as a note under section 3121 of this title.

Amendment by section 327(c)(4) 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 this title.

Amendment by section 328(c) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, see section 328(d)(2) of Pub. L. 98–21, set out as a note under section 3121 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENTS

Amendment by section 271(a) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

Pub. L. 97–248, title II, §276(a)(2), Sept. 3, 1982, 96 Stat. 558, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to services performed after the date of the enactment of this Act [Sept. 3, 1982].”

Pub. L. 97–248, title II, §276(b)(3), Sept. 3, 1982, 96 Stat. 559, provided that: “The amendments made by this subsection [amending this section] shall apply to remuneration paid after December 31, 1982, and before January 1, 1984.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 124(e)(2)(A) of Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 21 of this title.

Pub. L. 97–34, title VIII, §822(b), Aug. 13, 1981, 95 Stat. 351, as amended by Pub. L. 97–362, title II, §203, Oct. 25, 1982, 96 Stat. 1733; Pub. L. 98–369, div. A, title X, §1074, July 18, 1984, 98 Stat. 1053; Pub. L. 99–272, title XIII, §13303(c)(1), Apr. 7, 1986, 100 Stat. 327, provided that: “The amendments made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1980.”

#### EFFECTIVE DATE OF 1980 AMENDMENTS

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 this title.

Amendment by Pub. L. 96–222 applicable to payments made on or after Jan. 1, 1979, see section 101(b)(1)(E) of Pub. L. 96–222, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–84, §4(c), Oct. 10, 1979, 93 Stat. 654, provided that: “The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1979, for services performed after such date.”

#### EFFECTIVE DATE OF 1978 AMENDMENTS

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 this title.

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 this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to wages paid after Dec. 31, 1978, see section 314(c) of Pub. L. 95–216, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–566, title I, §111(c), Oct. 20, 1976, 90 Stat. 2667, provided that: “The amendments made by this section [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.”

Pub. L. 94–566, title I, §112(b), Oct. 20, 1976, 90 Stat. 2668, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.”

Pub. L. 94–566, title I, §113(b), Oct. 20, 1976, 90 Stat. 2669, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.”

Pub. L. 94–566, title I, §114(c), Oct. 20, 1976, 90 Stat. 2670, provided that: “The amendments made by this section [amending this section and section 6157 of this title] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.”

Amendment by section 116(b) of Pub. L. 94–566 applicable with respect to remuneration paid after Dec. 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such Dec. 31, see section 116(f)(2) of Pub. L. 94–566, set out as a note under section 3304 of this title.

Pub. L. 94–566, title II, §211(d)(1), Oct. 20, 1976, 90 Stat. 2677, provided that: “The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1977.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–373, title I, §101(c)(1), Aug. 10, 1970, 84 Stat. 696, provided that: “The amendments made by subsections (a) and (b)(1) [amending this section and section 6157 of this title] shall apply with respect to calendar years beginning after December 31, 1971.”

Pub. L. 91–373, title I, §102(c), Aug. 10, 1970, 84 Stat. 696, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.”

Pub. L. 91–373, title I, §103(b), Aug. 10, 1970, 84 Stat. 697, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.”

Pub. L. 91–373, title I, §105(c), Aug. 10, 1970, 84 Stat. 700, provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after December 31, 1971.”

Pub. L. 91–373, title I, §106(b), Aug. 10, 1970, 84 Stat. 701, provided that: “Subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1969.”

Pub. L. 91–373, title III, §302, Aug. 10, 1970, 84 Stat. 713, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1971.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by 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 this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after first day of first cal-

endar 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 this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment 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 22 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment 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 by sections 531(c) and 532 to 534 of 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.

Pub. L. 86-778, title V, §543(a), Sept. 13, 1960, 74 Stat. 986, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1960, for services performed after such date.

Amendment by Pub. L. 86-624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, §1, 68 Stat. 1130, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1955.

Act Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

#### NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108-121

No inference to be drawn from amendment to subsec. (b)(13) of this section by section 106 of Pub. L. 108-121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### REPORTING REQUIREMENTS

Pub. L. 103-182, title V, §507(c), (d), Dec. 8, 1993, 107 Stat. 2154, provided that:

“(c) STATE REPORTS.—Any State operating a self-employment program authorized by the Secretary of Labor under this section [amending this section, section 3304 of this title, and section 503 of Title 42, The Public Health and Welfare, and enacting provisions set out above] shall report annually to the Secretary on the number of individuals who participate in the self-employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

“(d) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this Act [Dec. 8, 1993], the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursuant to subsection (c) and include such other informa-

tion as the Secretary of Labor determines is appropriate.”

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

For purposes of this chapter, the term “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 Title 42, The Public Health and Welfare.

#### NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990

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 this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### APPLICABILITY OF UNEMPLOYMENT COMPENSATION TAX TO CERTAIN SERVICES PERFORMED FOR CERTAIN IN- DIAN TRIBAL GOVERNMENTS

Pub. L. 99-514, title XVII, §1705, Oct. 22, 1986, 100 Stat. 2780, provided that:

“(a) IN GENERAL.—For purposes of the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], service performed in the employ of a qualified Indian tribal government shall not be treated as employment (within the meaning of section 3306 of such Act) if it is service—

“(1) which is performed—

“(A) before, on, or after the date of the enactment of this Act [Oct. 22, 1986], but before January 1, 1988, and

“(B) during a period in which the Indian tribal government is not covered by a State unemployment compensation program, and

“(2) with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid.

“(b) DEFINITION.—For purposes of this section, the term ‘qualified Indian tribal government’ means an Indian tribal government the service for which is not covered by a State unemployment compensation program on June 11, 1986.”

REMUNERATION PAID AFTER SEPT. 30, 1985, TO FULL-TIME STUDENTS EMPLOYED BY SUMMER CAMPS

Pub. L. 99-272, title XIII, §13303(b), Apr. 7, 1986, 100 Stat. 327, provided that: "Notwithstanding paragraph (3) of section 276(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date of 1982 Amendments note above], the amendments made by paragraphs (1) and (2) of such section 276(b) [amending this section] shall also apply to remuneration paid after September 19, 1985."

ADMINISTRATION OF PROVISIONS COVERING PAYMENTS TO EMPLOYEES ON ACCOUNT OF SICKNESS OR ACCIDENT DISABILITY

Pub. L. 98-21, title III, §324(b)(4)(C), Apr. 20, 1983, 97 Stat. 124, provided that: "Rules similar to the rules of subsections (d) and (e) of section 3 of the Act entitled 'An Act to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act' (Public Law 97-123), approved December 29, 1981 [set out as notes under section 3121 of this title], shall apply in the administration of section 3306(b)(2)(A) of such Code (as amended by subparagraph (A))."

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR CO-OPERATIVES

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 text, means enacted before or after Sept. 13, 1960, the date of approval of Pub. L. 86-778.

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

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 an Effective Date of 1960 Amendment note under section 3305 of this title.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR CO-OPERATIVES

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. State law coverage of services performed for nonprofit organizations or governmental entities**

**(a) State law requirements**

For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306(c), and

(B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that a governmental entity, including an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

**(b) Section not to apply to certain service**

This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a);

(2) 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;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, or of an Indian tribe;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position which, under or pursuant to the State or tribal law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; and

(6) by an inmate of a custodial or penal institution.

**(c) Nonprofit organizations must employ 4 or more**

This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

**(d) Election by Indian tribe**

The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section. Notwithstanding the requirements of section 3306(a)(6), if, within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with re-

spect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306(c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).<sup>1</sup>

(Added Pub. L. 91-373, title I, §104(b)(1), Aug. 10, 1970, 84 Stat. 697; amended Pub. L. 94-566, title I, §115(a), (b), (c)(2), (3), title V, §506(a), Oct. 20, 1976, 90 Stat. 2670, 2671, 2687; Pub. L. 95-19, title III, §302(b), Apr. 12, 1977, 91 Stat. 44; Pub. L. 105-33, title V, §§5405(a), 5407(a), Aug. 5, 1997, 111 Stat. 604, 605; Pub. L. 106-554, §1(a)(7) [title I, §166(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-627.)

REFERENCES IN TEXT

Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), referred to in subsec. (d), was classified to section 450b(e) of Title 25, Indians, prior to editorial reclassification as section 5304(e) of Title 25.

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106-554, §1(a)(7) [title I, §166(b)(1)], inserted “, including an Indian tribe,” after “the State law shall provide that a governmental entity”.

Subsec. (b)(3)(B). Pub. L. 106-554, §1(a)(7) [title I, §166(b)(2)], inserted “, or of an Indian tribe” before semicolon at end.

Subsec. (b)(3)(E). Pub. L. 106-554, §1(a)(7) [title I, §166(b)(3)], inserted “or tribal” after “the State”.

Subsec. (b)(5). Pub. L. 106-554, §1(a)(7) [title I, §166(b)(4)], inserted “or of an Indian tribe” after “an agency of a State or political subdivision thereof”.

Subsec. (d). Pub. L. 106-554, §1(a)(7) [title I, §166(c)], added subsec. (d).

1997—Subsec. (b)(1)(C). Pub. L. 105-33, §5407(a), added subpar. (C).

Subsec. (b)(3)(F). Pub. L. 105-33, §5405(a), added subpar. (F).

1977—Subsec. (a)(2). Pub. L. 95-19 substituted “(or group of governmental entities or other organizations)” for “(or group of organizations)”.

1976—Pub. L. 94-566, §115(c)(3), substituted “services performed for nonprofit organizations or governmental entities” for “certain services performed for nonprofit organizations and for State hospitals and institutions of higher education” in section catchline.

Subsec. (a)(1)(B). Pub. L. 94-566, §115(a), struck out “performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education located in the State, if such service is” after “service”.

Subsec. (a)(2). Pub. L. 94-566, §506(a), substituted “a governmental entity or any other organization” for “an organization”, “paragraph (1)” for “paragraph (1)(A)”, and “that governmental entities or other organizations” for “that organizations”.

Subsec. (b)(3). Pub. L. 94-566, §115(b)(1), substituted reference to services performed in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such services are performed by an individual in the exercise of his duties as an elected official, as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, as a

<sup>1</sup> See References in Text note below.



member of the State National Guard or Air National Guard, as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency, or in a position which, under or pursuant to the State law, is designated as a major nontenured policymaker or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week, for reference to services performed in the employ of a school which is not an institution of higher education.

Subsec. (b)(6). Pub. L. 94-566, §115(b)(2), substituted “by an inmate of a custodial or penal institution” for “for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution”.

Subsec. (d). Pub. L. 94-566, §115(c)(2), struck out subsec. (d) which defined “institution of higher education”. See section 3304(f) of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 applicable to service performed on or after Dec. 21, 2000, with transition rule for service performed in the employ of an Indian tribe, see section 166(e) of Pub. L. 106-554, set out as a note under section 3306 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, §5405(b), Aug. 5, 1997, 111 Stat. 605, provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-33, title V, §5407(b), Aug. 5, 1997, 111 Stat. 605, provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-19, title III, §302(d)(2), Apr. 12, 1977, 91 Stat. 45, provided that: “The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976 [which amended this section in 1976, see Effective Date of 1976 Amendment note below].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 115(a), (b), (c)(2), (3) of Pub. L. 94-566, see section 115(d) of Pub. L. 94-566, set out as a note under section 3304 of this title.

For effective date of amendment by section 506(a) of Pub. L. 94-566, see section 506(c) of Pub. L. 94-566, set out as a note under section 3304 of this title.

#### EFFECTIVE DATE

Section applicable with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after Dec. 31, 1971, see section 104(d)(1) of Pub. L. 91-373, set out as a note under section 3304 of this title.

### § 3310. Judicial review

#### (a) In general

Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall

be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

#### (b) Findings of fact

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

#### (c) Jurisdiction of court; review

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

#### (d) Stay of Secretary of Labor's action

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary of Labor's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary of Labor's action and including such other relief as may be necessary to preserve status or rights.

(Added Pub. L. 91-373, title I, §131(b)(1), Aug. 10, 1970, 84 Stat. 703; amended Pub. L. 94-455, title XIX, §1906(b)(13)(F), (H), Oct. 4, 1976, 90 Stat. 1835; Pub. L. 98-620, title IV, §402(28)(A), Nov. 8, 1984, 98 Stat. 3359.)

#### AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620 struck out subsec. (e) which had provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary of Labor or of the State would receive, a preference and would be heard and determined as expeditiously as possible.

1976—Subsec. (d)(2). Pub. L. 94-455, §1906(b)(13)(F), substituted “the Secretary of Labor's action” for “the Secretary's action” in two places.

Subsec. (e). Pub. L. 94-455, §1906(b)(13)(H), substituted “of the Secretary of Labor” for “of the Secretary”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

### § 3311. Short title

This chapter may be cited as the “Federal Unemployment Tax Act.”

(Aug. 16, 1954, ch. 736, 68A Stat. 454, §3308; renumbered §3309, Pub. L. 86-778, title V,

§ 531(d)(1), Sept. 13, 1960, 74 Stat. 983; renumbered § 3311, Pub. L. 91-373, title I, § 104(b)(1), Aug. 10, 1970, 84 Stat. 697.)

#### SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-566, § 1, Oct. 20, 1976, 90 Stat. 2667, provided that: "This Act [enacting section 603a of Title 42, The Public Health and Welfare, amending section 3304 of this title and provisions set out as notes under sections 3301, 3303, 3304, 3306, 3309, and 6157 of this title, sections 8501, 8503, 8504, 8505, 8506, 8521, and 8522 of Title 5, Government Organization and Employees, sections 49b and 49d of Title 29, Labor, and sections 607, 1101, 1105, 1301, 1321, 1382, 1382a, 1382d, and 1382e of Title 42, and enacting provisions set out as notes under sections 3301, 3303, 3304, and 3306 of this title, sections 8501 and 8506 of Title 5, and sections 607, 1101, 1321, 1382, 1382d, 1382e, and 1396a of Title 42] may be cited as the 'Unemployment Compensation Amendments of 1976'."

#### SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-45, § 1, June 30, 1975, 89 Stat. 236, provided that: "This Act [amending sections 44 and 3302 of this title and amending provisions set out as notes under sections 44 and 3304 of this title and enacting provisions set out as notes under sections 3302 and 3304 of this title] may be cited as the 'Emergency Compensation and Special Unemployment Assistance Extension Act of 1975'."

#### SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-373, § 1, Aug. 10, 1970, 84 Stat. 695, provided: "That this Act [enacting sections 3309 and 3310 of this title and sections 504, 1106, 1107, and 1108 of Title 42, The Public Health and Welfare, repealing section 8524 of Title 5, Government Organization and Employees, and amending sections 1563, 3301 to 3306, and 6157 of this title, sections 77c and 78c of Title 15, Commerce and Trade, and sections 1101, 1102, 1103, 1105, and 1323 of Title 42, and enacting provisions set out as notes under sections 3301 to 3304, 3306, and 6157 of this title, section 77c of Title 15, and section 1101 of Title 42] may be cited as the 'Employment Security Amendments of 1970'."

### CHAPTER 23A—RAILROAD UNEMPLOYMENT REPAYMENT TAX

Sec.	
3321.	Imposition of tax.
3322.	Definitions.

#### AMENDMENTS

1990—Pub. L. 101-508, title XI, § 11704(a)(18), Nov. 5, 1990, 104 Stat. 1388-519, substituted "23A—" for "23A." in chapter heading.

1988—Pub. L. 100-647, title VII, § 7106(a), Nov. 10, 1988, 102 Stat. 3772, reenacted chapter heading and item 3321 without change, substituted "Definitions" for "Taxable period" in item 3322, and omitted item 3323 "Other definitions".

### § 3321. Imposition of tax

#### (a) General rule

There is hereby imposed on every rail employer for each calendar month an excise tax, with respect to having individuals in his employ, equal to 4 percent of the total rail wages paid by him during such month.

#### (b) Tax on employee representatives

##### (1) In general

There is hereby imposed on the income of each employee representative a tax equal to 4 percent of the rail wages paid to him during the calendar month.

##### (2) Determination of wages

The rail wages of an employee representative for purposes of paragraph (1) shall be de-

termined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were a rail employer.

#### (c) Termination if loans to railroad unemployment fund repaid

The tax imposed by this section shall not apply to rail wages paid on or after the 1st day of any calendar month if, as of such 1st day, there is—

(1) no balance of transfers made before October 1, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

(2) no unpaid interest on such transfers.

(Added Pub. L. 98-76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 426; amended Pub. L. 99-272, title XIII, § 13301(a), Apr. 7, 1986, 100 Stat. 325; Pub. L. 100-647, title I, § 1018(u)(17), title VIII, § 7106(a), Nov. 10, 1988, 102 Stat. 3590, 3772.)

#### REFERENCES IN TEXT

Section 10(d) of the Railroad Unemployment Insurance Act, referred to in subsec. (c)(1), is classified to section 360(d) of Title 45, Railroads.

#### AMENDMENTS

1988—Pub. L. 100-647, § 7106(a), amended section generally, revising and restating provisions of subsecs. (a) and (b) and specifying imposition of 4 percent tax on rail wages rather than a tax based on the "applicable percentage" of rail wages, and in subsec. (c) substituting provisions relating to termination if loans to railroad unemployment fund repaid for provisions relating to rates of tax.

Pub. L. 100-647, § 1018(u)(17), added a period at end of par. (4).

1986—Subsec. (c). Pub. L. 99-272 amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows:

"(c) RATE OF TAX.—For purposes of this section—

"(1) FOR TAXABLE PERIOD JULY 1 THROUGH DECEMBER 31, 1986.—The applicable percentage for the taxable period beginning on July 1, 1986, and ending on December 31, 1986, shall be 2 percent.

"(2) SUBSEQUENT TAXABLE PERIODS.—The applicable percentage for any taxable period beginning after 1986 shall be the sum of—

"(A) 2 percent, plus

"(B) 0.3 percent for each preceding taxable period. In no event shall the applicable percentage exceed 5 percent."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(u)(17) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VII, § 7106(d), Nov. 10, 1988, 102 Stat. 3774, provided that: "The amendments made by this section [amending this section and sections 3322, 6157, 6201, 6317, 6513, and 6601 of this title, omitting section 3323 of this title, and amending provisions set out as a note under section 231n of Title 45, Railroads], and the provisions of subsection (b) [set out below], shall apply to remuneration paid after December 31, 1988."

#### EFFECTIVE DATE

Pub. L. 98-76, title II, § 231(d), Aug. 12, 1983, 97 Stat. 429, provided that: "The amendments made by this section [enacting this chapter and amending sections 6157, 6201, 6317, 6513, and 6601 of this title] shall apply to remuneration paid after June 30, 1986."

## CONTINUATION OF SURTAX RATE THROUGH 1990

Pub. L. 100-647, title VII, §7106(b), Nov. 10, 1988, 102 Stat. 3773, provided that:

“(1) IN GENERAL.—In the case of any calendar month beginning before January 1, 1991—

“(A) there shall be substituted for ‘4 percent’ in subsections (a) and (b) of section 3321 of the 1986 Code the percentage equal to the sum of—

“(i) 4 percent, plus

“(ii) the surtax rate (if any) for such calendar month, and

“(B) subsection (c) of such section shall not apply to so much of the tax imposed by such section as is attributable to the surtax rate.

“(2) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

“(A) 3.5 percent for each month during a calendar year if, as of September 30, of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act [45 U.S.C. 360(d)], and

“(B) zero for any other calendar month.”

**§ 3322. Definitions****(a) Rail employer**

For purposes of this chapter, the term “rail employer” means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.

**(b) Rail wages**

For purposes of this chapter, the term “rail wages” means, with respect to any calendar month, so much of the remuneration paid during such month which is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act.

**(c) Employee representative**

For purposes of this chapter, the term “employee representative” has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

**(d) Certain rules made applicable**

For purposes of this chapter, rules similar to the rules of section 3307 and 3308 shall apply.

(Added Pub. L. 98-76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99-272, title XIII, §13301(d), Apr. 7, 1986, 100 Stat. 327; Pub. L. 100-647, title VII, §7106(a), Nov. 10, 1988, 102 Stat. 3773.)

## REFERENCES IN TEXT

Section 1 of the Railroad Unemployment Insurance Act, referred to in subsecs. (a) and (c), is classified to section 351 of Title 45, Railroads.

Section 8(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (b), is classified to section 358(a) of Title 45.

## AMENDMENTS

1988—Pub. L. 100-647 amended section generally, substituting present provisions for former provisions relating to taxable period, which had provided, in subsec. (a), for a general rule and, in subsec. (b), for earlier termination if loans to rail unemployment fund repaid.

1986—Subsec. (a)(2), (3). Pub. L. 99-272, §13301(d)(1), struck out “and before 1990, and” after “1986” in par. (2) and struck out par. (3) relating to the period beginning on Jan. 1, 1990, and ending on Sept. 30, 1990.

Subsec. (b). Pub. L. 99-272, §13301(d)(2), substituted “The basic rate under section 3321(c)(1)(A) of the tax

imposed by section 3321 shall not apply” for “The tax imposed by this chapter shall not apply” in introductory provision, and inserted “made before October 1, 1985,” in par. (1).

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100-647, set out as a note under section 3321 of this title.

## 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 chapter, the term “rail 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 Title 42, The Public Health and Welfare.

**[§ 3323. Omitted]**

Section, added Pub. L. 98-76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99-272, title XIII, §13301(b), Apr. 7, 1986, 100 Stat. 326, contained definitions, prior to the general amendment of this chapter by Pub. L. 100-647, §7106(a). See section 3322 of this title.

**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.

3405. Special rules for pensions, annuities, and certain other deferred income.<sup>1</sup>

3406. Backup withholding.

[3451 to 3456. Repealed.]

## AMENDMENTS

1983—Pub. L. 98-67, title I, §§102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248, title III, §307(b)(4), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 24 is amended by striking out “ON WAGES”, items for subchapters A and B are added in analysis, and heading “Subchapter A—Withholding From Wages” is added. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

**§ 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 (including benefits) paid in any medium other than

<sup>1</sup>Editorially supplied. Section 3405 added by Pub. L. 97-248 without corresponding amendment of analysis.

cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)); 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 such services, performed by a non-resident alien individual, as may be designated by regulations prescribed by the Secretary; or

[(7) Repealed. Pub. L. 89-809, title I, §103(k), Nov. 13, 1966, 80 Stat. 1554]

(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 the 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) per-

formed 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

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; 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 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 services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(12) 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) for a payment described in section 402(h)(1) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

(D) under an arrangement to which section 408(p) applies; or

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),<sup>1</sup> or

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

<sup>1</sup> So in original. The comma probably should be a semicolon.

(15) 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 (determined without regard to section 274(n)); or

(16)(A) as tips in any medium other than cash;

(B) as cash tips to 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;<sup>2</sup>

(17) for service described in section 3121(b)(20);<sup>2</sup>

(18) for 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, 129, 134(b)(4), or 134(b)(5);<sup>2</sup>

(19) for 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;<sup>2</sup>

(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6));<sup>2</sup>

(21) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b);<sup>2</sup>

(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d); or

(23) for any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

The term “wages” includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.

#### **(b) Payroll period**

For purposes of this chapter, the term “payroll period” means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term “miscellaneous payroll period” means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

#### **(c) Employee**

For purposes of this chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term “employee” also includes an officer of a corporation.

#### **(d) Employer**

For purposes of this chapter, the term “employer” means the person for whom an individ-

ual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term “employer” (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term “employer” (except for purposes of subsection (a)) means such person.

**[(e) Repealed. Pub. L. 115-97, title I, § 11041(c)(2)(A), Dec. 22, 2017, 131 Stat. 2082]**

#### **(f) Tips**

For purposes of subsection (a), the term “wages” includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

#### **(g) Crew leader rules to apply**

Rules similar to the rules of section 3121(o) shall apply for purposes of this chapter.

#### **(h) Differential wage payments to active duty members of the uniformed services**

##### **(1) In general**

For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

##### **(2) Differential wage payment**

For purposes of paragraph (1), the term “differential wage payment” means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

#### **(i) Qualified stock for which an election is in effect under section 83(i)**

For purposes of subsection (a), qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i) shall be treated as wages—

(1) received on the earliest date described in section 83(i)(1)(B), and

(2) in an amount equal to the amount included in income under section 83 for the taxable year which includes such date.

(Aug. 16, 1954, ch. 736, 68A Stat. 455; Aug. 9, 1955, ch. 681, 69 Stat. 616; Pub. L. 87-256, §110(g)(1), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87-293, title II, §201(c), Sept. 22, 1961, 75 Stat. 625; Pub. L. 87-792,

<sup>2</sup> So in original. Probably should be followed by “or”.

§ 7(l), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88-272, title II, §§ 204(b), 213(c), Feb. 26, 1964, 78 Stat. 36, 52; Pub. L. 89-97, title III, § 313(d)(1), (2), July 30, 1965, 79 Stat. 383, 384; Pub. L. 89-809, title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 92-279, § 2, Apr. 26, 1972, 86 Stat. 125; Pub. L. 93-406, title II, § 2002(g)(7), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94-455, title XII, § 1207(e)(1)(C), title XV, § 1501(b)(7), title XIX, §§ 1903(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1736, 1810, 1834; Pub. L. 95-600, title I, § 164(b)(1), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 95-615, § 207(a), Nov. 8, 1978, 92 Stat. 3108; Pub. L. 96-222, title I, § 103(a)(13)(A), Apr. 1, 1980, 94 Stat. 213; Pub. L. 97-34, title I, § 112(b)(5), 124(e)(2)(A), title III, § 311(h)(6), Aug. 13, 1981, 95 Stat. 195, 200, 282; Pub. L. 97-448, title I, § 103(c)(12)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, § 491(d)(38), title V, § 531(d)(4), July 18, 1984, 98 Stat. 851, 885; Pub. L. 99-514, title I, § 122(e)(4), title XII, § 1272(c), Oct. 22, 1986, 100 Stat. 2112, 2594; Pub. L. 100-647, title I, §§ 1001(g)(4)(B)(iii), 1011(f)(9), 1011B(a)(22)(D), (33), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3488; Pub. L. 101-140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title VII, § 7631(a), (b), Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101-508, title XI, § 11703(f)(1), Nov. 5, 1990, 104 Stat. 1388-517; Pub. L. 104-117, § 1(c), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104-188, title I, §§ 1421(b)(8)(D), 1704(t)(4)(C), Aug. 20, 1996, 110 Stat. 1798, 1887; Pub. L. 104-191, title III, § 301(c)(2)(C), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105-206, title VI, § 6023(14), (15), July 22, 1998, 112 Stat. 825; Pub. L. 107-16, title VI, § 641(a)(1)(D)(i), June 7, 2001, 115 Stat. 119; Pub. L. 108-121, title I, § 106(b)(4), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108-173, title XII, § 1201(d)(2)(C), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108-357, title III, § 320(b)(4), title VIII, § 885(b)(2), Oct. 22, 2004, 118 Stat. 1473, 1639; Pub. L. 108-375, div. A, title V, § 585(b)(2)(D), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109-135, title IV, § 412(tt), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110-245, title I, § 105(a)(1), 115(c), June 17, 2008, 122 Stat. 1628, 1637; Pub. L. 115-97, title I, §§ 11041(c)(2)(A), 13603(b)(1), Dec. 22, 2017, 131 Stat. 2082, 2163.)

## REFERENCES IN TEXT

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (a)(13), are classified to sections 2504(c) and 2505(1), respectively, of Title 22, Foreign Relations and Intercourse.

## AMENDMENTS

2017—Subsec. (e). Pub. L. 115-97, § 11041(c)(2)(A), struck out subsec. (e). Text read as follows: “For purposes of this chapter, the term ‘number of withholding exemptions claimed’ means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.”

Subsec. (i). Pub. L. 115-97, § 13603(b)(1), added subsec. (i).

2008—Subsec. (a)(23). Pub. L. 110-245, § 115(c), added par. (23).

Subsec. (h). Pub. L. 110-245, § 105(a)(1), added subsec. (h).

2005—Subsecs. (g), (h). Pub. L. 109-135 redesignated subsec. (h) as (g).

2004—Subsec. (a). Pub. L. 108-357, § 885(b)(2), inserted concluding provisions.

Subsec. (a)(18). Pub. L. 108-375 substituted “134(b)(4), or 134(b)(5)” for “or 134(b)(4)”.

Subsec. (a)(19). Pub. L. 108-357, § 320(b)(4), inserted “108(f)(4),” after “74(c).”.

2003—Subsec. (a)(18). Pub. L. 108-121 substituted “129, or 134(b)(4)” for “or 129”.

Subsec. (a)(22). Pub. L. 108-173 added par. (22).

2001—Subsec. (a)(12)(E). Pub. L. 107-16 added subpar. (E).

1998—Subsec. (a)(19), (21). Pub. L. 105-206 inserted “for” after par. designation.

1996—Subsec. (a)(1). Pub. L. 104-188, § 1704(t)(4)(C), substituted “combat zone compensation” for “combat pay”.

Pub. L. 104-117 inserted before semicolon “to the extent remuneration for such service is excludable from gross income under such section”.

Subsec. (a)(12)(D). Pub. L. 104-188, § 1421(b)(8)(D), added subpar. (D).

Subsec. (a)(21). Pub. L. 104-191 added par. (21).

1990—Subsec. (a)(20). Pub. L. 101-508 added par. (20).

1989—Subsec. (a)(2). Pub. L. 101-239, § 7631(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “for agricultural labor (as defined in section 3121(g)); or”.

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

Subsec. (h). Pub. L. 101-239, § 7631(b), added subsec. (h).

1988—Subsec. (a)(12)(C). Pub. L. 100-647, § 1011(f)(9), substituted “section 402(h)(1) and (2)” for “section 219” and “an exclusion” for “a deduction”.

Subsec. (a)(15). Pub. L. 100-647, § 1001(g)(4)(B)(iii), inserted “(determined without regard to section 274(n))” after “section 217”.

Subsec. (a)(19), (20). Pub. L. 100-647, § 1011B(a)(33), redesignated par. (20) as (19) and struck out former par. (19) which excluded medical care reimbursement made to or for benefit of employee under self-insured medical reimbursement plan.

Subsec. (g). Pub. L. 100-647, § 1011B(a)(22)(D), added subsec. (g) relating to benefits provided under certain employee benefit plans.

1986—Subsec. (a)(8)(D). Pub. L. 99-514, § 1272(c), added subpar. (D).

Subsec. (a)(20). Pub. L. 99-514, § 122(e)(4), inserted reference to section 74(c).

1984—Subsec. (a). Pub. L. 98-369, § 531(d)(4)(A), inserted “(including benefits)” in introductory provisions.

Subsec. (a)(12). Pub. L. 98-369, § 491(d)(38), struck out subpar. (C) which provided: “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);” and redesignated subpar. (D) as (C).

Subsec. (a)(20). Pub. L. 98-369, § 531(d)(4)(B), added par. (20).

1983—Subsec. (a)(12)(D). Pub. L. 97-448 substituted “section 219” for “section 219(a)”.

1981—Subsec. (a)(12)(D). Pub. L. 97-34, § 311(h)(6), substituted “section 219(a)” for “section 219(a) or 220(a)”.

Subsec. (a)(18). Pub. L. 97-34, § 124(e)(2)(A), substituted “section 127 or 129” for “section 127”.

Pub. L. 97-34, § 112(b)(5), redesignated par. (19) as (18). Former par. (18), relating to 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 was reasonable to believe that a corresponding deduction was allowable under section 913 (relating to deduction for certain expenses of living abroad), was struck out.

Subsec. (a)(19), (20). Pub. L. 97-34, § 112(b)(5), redesignated par. (20) as (19). Former par. (19) redesignated (18).

1980—Subsec. (a)(18) to (20). Pub. L. 96-222 redesignated par. (18), added by Pub. L. 95-600, as (19), in par. (19) as so redesignated, substituted “section 127; or” for “section 124.”, and added par. (20).

1978—Subsec. (a)(18). Pub. L. 95-615 added par. (18) relating to payments or benefits excludable from income under section 124.

Pub. L. 95-600 added par. (18) relating to remuneration for which a corresponding deduction is allowable under section 913.

1976—Subsec. (a)(6). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (a)(12)(D). Pub. L. 94-455, §1501(b)(7), inserted “or 220(a)” after “section 219(a)”.

Subsec. (a)(17). Pub. L. 94-455, §1207(e)(1)(C), added par. (17).

Subsec. (c). Pub. L. 94-455, §1903(c), struck out “Territory” after “a State”.

1974—Subsec. (a)(12)(D). Pub. L. 93-406 added subpar. (D).

1972—Subsec. (a)(1). Pub. L. 92-279 struck out “as a member of the Armed Forces of the United States” after “active service”, substituted “employee” for “member”, and parenthetical text “(relating to certain combat pay of members of the Armed Forces of the United States)”.

1966—Subsec. (a)(6), (7). Pub. L. 89-809, §103(k), struck out par. (6) dealing with services performed by non-resident alien individuals other than residents of contiguous countries who enter and leave the United States at frequent intervals, residents of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or individuals temporarily present in the United States as nonimmigrants under certain conditions, redesignated par. (7) as (6), and in par. (6) as so redesignated, struck out “who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals” after “nonresident alien individual”.

1965—Subsec. (a)(16). Pub. L. 89-97, §313(d)(2), added par. (16).

Subsec. (f). Pub. L. 89-97, §313(d)(1), added subsec. (f).

1964—Subsec. (a)(14). Pub. L. 88-272, §204(b), added par. (14).

Subsec. (a)(15). Pub. L. 88-272, §213(c), added par. (15).

1962—Subsec. (a)(12)(B), (C). 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. (a)(6)(C). Pub. L. 87-256 added subpar. (C).

Subsec. (a)(13). Pub. L. 87-293 added par. (13).

1955—Subsec. (a). Act Aug. 9, 1955, excluded from definition of wages, remuneration paid for services performed in a possession of the United States by a United States citizen if the employer is required by the law of the possession to withhold income tax on the remuneration.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11041(c)(2)(A) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11041(f)(1) of Pub. L. 115-97, set out as a note under section 151 of this title.

Amendment by section 13603(b)(1) of Pub. L. 115-97 applicable to stock attributable to options exercised, or restricted stock units settled, after Dec. 31, 2017, see section 13603(f)(1) of Pub. L. 115-97, set out as a note under section 83 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-245, title I, §105(a)(2), June 17, 2008, 122 Stat. 1628, provided that: “The amendment made by this subsection [amending this section] shall apply to remuneration paid after December 31, 2008.”

Amendment by section 115(c) of 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 this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108-375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108-375, set out as a note under section 134 of this title.

Amendment by section 320(b)(4) of Pub. L. 108-357 applicable to amounts received by an individual in tax-

able years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108-357, set out as a note under section 108 of this title.

Amendment by section 885(b)(2) of Pub. L. 108-357 applicable to amounts deferred after Dec. 31, 2004, with special rules relating to earnings and material modifications and exception for nonelective deferred compensation, see section 885(d) of Pub. L. 108-357, set out as an Effective Date note under section 409A of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENTS

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

Amendment by Pub. L. 108-121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

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

Amendment by section 1421(b)(8)(D) 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 this title.

Amendment by Pub. L. 104-117 applicable to remuneration paid after Mar. 20, 1996, see section 1(e) of Pub. L. 104-117, set out in a Treatment of Certain Individuals Performing Services in Certain Hazardous Duty Areas; Effective Date note under section 112 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11703(f)(2), Nov. 5, 1990, 104 Stat. 1388-518, provided that: “The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99-514, see Effective Date of 1986 Amendment note set out under section 79 of this title] but shall not apply to any amount paid before the date of the enactment of this Act [Nov. 5, 1990] which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid.”

#### EFFECTIVE DATE OF 1989 AMENDMENTS

Pub. L. 101-239, title VII, §7631(c), Dec. 19, 1989, 103 Stat. 2378, provided that: “The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989.”

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

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(B)(iii), 1011(f)(9), and 1011B(a)(33) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

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

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(4) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986,

see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1272(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(38) 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 this title.

Amendment by section 531(d)(4) 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 this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 112(b)(5) of Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

Amendment by section 124(e)(2)(A) of Pub. L. 97-34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f)(2) of Pub. L. 97-34, set out as a note under section 21 of this title.

Amendment by section 311(h)(6) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-615 applicable to remuneration paid after Nov. 8, 1978, but with taxpayers allowed to elect not to have the amendment apply with respect to any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, see section 209(b), (c) of Pub. L. 95-615, set out as a note under section 911 of this title.

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 a note under section 127 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(7) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-279, §3(b), Apr. 26, 1972, 86 Stat. 125, provided that: "The amendments made by section 2 [amending this section] shall apply to wages paid on or after the first day of the first calendar month which begins more than 30 days after the date of the enactment of this Act [Apr. 26, 1972]."

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to remuneration paid after Dec. 31, 1966, see section

103(n)(4) of Pub. L. 89-809, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(d)(1), (2) 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 a note under section 6053 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(b) of Pub. L. 88-272 applicable to remuneration paid after Dec. 31, 1963, in the form of group-term life insurance provided after such date, see section 204(d) of Pub. L. 88-272, set out as an Effective Date note under section 79 of this title.

Amendment by section 213(c) of Pub. L. 88-272 applicable to remuneration paid after the seventh day following Feb. 26, 1964, see section 213(d) of Pub. L. 88-272, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment 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 22 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87-293 applicable with respect to remuneration paid after Sept. 22, 1961, see section 201(d) of Pub. L. 87-293, set out as a note under section 912 of this title.

Pub. L. 87-256, §110(h)(4), Sept. 21, 1961, 75 Stat. 538, provided that: "The amendments made by subsection (g) of this section [amending this section and section 3402 of this title] shall apply with respect to wages paid after December 31, 1961."

#### SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-368, §1, Mar. 15, 1966, 80 Stat. 38, provided that: "This Act [enacting sections 276 and 6682 of this title and section 428 of Title 42, The Public Health and Welfare, amending sections 1402, 1403, 3402, 4061, 4251, 4253, 6015, 6154, 6211, 6412, 6654, 7205, and 7701 of this title and section 1202 of Title 19, Customs Duties, and enacting provisions set out as notes under sections 276, 3402, 4061, 4251, 6154, and 6654 of this title and section 428 of Title 42] may be cited as the 'Tax Adjustment Act of 1966'."

#### REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(c) of Pub. L. 87-293, 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.

#### NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108-121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108-121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity



contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

**CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES**

Pub. L. 95-600, title V, § 530, Nov. 6, 1978, 92 Stat. 2885, as amended by Pub. L. 96-167, § 9(d), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96-541, § 1, Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97-248, title II, § 269(c)(1), (2), 96 Stat. 552; Pub. L. 99-514, § 2, title XVII, § 1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781; Pub. L. 104-188, title I, § 1122(a), Aug. 20, 1996, 110 Stat. 1766; Pub. L. 109-280, title VIII, § 864(a), Aug. 17, 2006, 120 Stat. 1024; Pub. L. 110-458, title I, § 108(m), Dec. 23, 2008, 122 Stat. 5110, provided that:

“(a) **TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.**—

“(1) **IN GENERAL.**—If—

“(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

“(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

“(2) **STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).**—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

“(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

“(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

“(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

“(3) **CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.**—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

“(4) **REFUND OR CREDIT OF OVERPAYMENT.**—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act [Nov. 6, 1978] by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.

“(b) **PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.**—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act [Nov. 6, 1978] and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

“(c) **DEFINITIONS.**—For purposes of this section—

“(1) **EMPLOYMENT TAX.**—The term ‘employment tax’ means any tax imposed by subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 3101 et seq. of this title].

“(2) **EMPLOYMENT STATUS.**—The term ‘employment status’ means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

“(d) **EXCEPTION.**—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

“(e) **SPECIAL RULES FOR APPLICATION OF SECTION.**—

“(1) **NOTICE OF AVAILABILITY OF SECTION.**—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

“(2) **RULES RELATING TO STATUTORY STANDARDS.**—For purposes of subsection (a)(2)—

“(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer.

“(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

“(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

“(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

“(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

“(3) **AVAILABILITY OF SAFE HARBORS.**—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

“(4) **BURDEN OF PROOF.**—

“(A) **IN GENERAL.**—If—

“(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

“(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

“(B) **EXCEPTION FOR OTHER REASONABLE BASIS.**—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

“(5) **PRESERVATION OF PRIOR PERIOD SAFE HARBOR.**—If—

“(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

“(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

“(6) SUBSTANTIALLY SIMILAR POSITION.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

“(f) TREATMENT OF TEST ROOM SUPERVISORS AND PROCTORS WHO ASSIST IN THE ADMINISTRATION OF COLLEGE ENTRANCE AND PLACEMENT EXAMS.—

“(1) IN GENERAL.—In the case of an individual described in paragraph (2) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, this section shall be applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to subsection (a)(3) thereof.

“(2) APPLICABILITY.—An individual is described in this paragraph if the individual—

“(A) is providing the services described in subsection (a) to an organization described in section 501(c), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986, and

“(B) is not otherwise treated as an employee of such organization for purposes of subtitle C of such Code (relating to employment taxes).”

[Pub. L. 109-280, title VIII, §864(b), Aug. 17, 2006, 120 Stat. 1024, provided that: “The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to remuneration for services performed after December 31, 2006.”]

[Pub. L. 104-188, title I, §1122(b), Aug. 20, 1996, 110 Stat. 1767, provided that:

[[“(1) IN GENERAL.—The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to periods after December 31, 1996.

[[“(2) NOTICE BY INTERNAL REVENUE SERVICE.—Section 530(e)(1) of the Revenue Act of 1978 [Pub. L. 95-600] (as added by subsection (a)) shall apply to audits which commence after December 31, 1996.

[[“(3) BURDEN OF PROOF.—

[[“(A) IN GENERAL.—Section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

[[“(B) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997.”]

[Pub. L. 99-514, title XVII, §1706(b), Oct. 22, 1986, 100 Stat. 2781, provided that: “The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to remuneration paid and services rendered after December 31, 1986.”]

## § 3402. Income tax collected at source

### (a) Requirement of withholding

#### (1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall—

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

### (2) Amount of wages

For purposes of applying tables or procedures prescribed under paragraph (1), the term “the amount of wages” means the amount by which the wages exceed the taxpayer’s withholding allowance, prorated to the payroll period.

### (b) Percentage method of withholding

(1) If wages are paid with respect to a period which is not a payroll period, the withholding allowance allowable with respect to each payment of such wages shall be the allowance allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding allowance allowable with respect to each payment of such wages shall be the allowance allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(3) In any case in which the period, or the time described in paragraph (2), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to compute the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period.

(4) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

### (c) Wage bracket withholding

(1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary in accordance with paragraph (6).

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of em-

ployment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(6) In the case of wages paid after December 31, 1969, the amount deducted and withheld under paragraph (1) shall be determined in accordance with tables prescribed by the Secretary. In the tables so prescribed, the amounts set forth as amounts of wages and amounts of income tax to be deducted and withheld shall be computed on the basis of the table for an annual payroll period prescribed pursuant to subsection (a).

**(d) Tax paid by recipient**

If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

**(e) Included and excluded wages**

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

**(f) Withholding allowance**

**(1) In general**

Under rules determined by the Secretary, an employee receiving wages shall on any day be entitled to a withholding allowance determined based on—

(A) whether the employee is an individual for whom a deduction is allowable with respect to another taxpayer under section 151;

(B) if the employee is married, whether the employee's spouse is entitled to an allowance, or would be so entitled if such spouse were an employee receiving wages, under subparagraph (A) or (D), but only if such spouse does not have in effect a withholding allowance certificate claiming such allowance;

(C) the number of individuals with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable a credit under section 24(a) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) any additional amounts to which the employee elects to take into account under subsection (m), but only if the employee's spouse does not have in effect a withholding allowance certificate making such an election;

(E) the standard deduction allowable to such employee (one-half of such standard deduction in the case of an employee who is married (as determined under section 7703) and whose spouse is an employee receiving wages subject to withholding); and

(F) whether the employee has withholding allowance certificates in effect with respect to more than 1 employer.

**(2) Allowance certificates**

**(A) On commencement of employment**

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding allowance certificate relating to the withholding allowance claimed by the employee, which shall in no event exceed the amount to which the employee is entitled.

**(B) Change of status**

If, on any day during the calendar year, an employee's withholding allowance is in excess of the withholding allowance to which the employee would be entitled had the employee submitted a true and accurate withholding allowance certificate to the employer on that day, the employee shall within 10 days thereafter furnish the employer with a new withholding allowance certificate. If, on any day during the calendar year, an employee's withholding allowance is greater than the withholding allowance claimed, the employee may furnish the employer with a new withholding allowance certificate relating to the withholding allowance to which the employee is so entitled, which shall in no event exceed the amount to which the employee is entitled on such day.

**(C) Change of status which affects next calendar year**

If on any day during the calendar year the withholding allowance to which the employee will be, or may reasonably be expected to be, entitled at the beginning of the employee's next taxable year under subtitle A is different from the allowance to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary shall by regulations prescribe, furnish the employer with a withholding allowance certificate relating to the withholding allowance which the employee claims with respect to such next taxable

year, which shall in no event exceed the withholding allowance to which the employee will be, or may reasonably be expected to be, so entitled.

**(3) When certificate takes effect**

**(A) First certificate furnished**

A withholding allowance certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

**(B) Furnished to take place of existing certificate**

**(i) In general**

Except as provided in clauses (ii) and (iii), a withholding allowance certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

**(ii) Employer may elect earlier effective date**

At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

**(iii) Change of status which affects next year**

Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished.

**(4) Period during which certificate remains in effect**

A withholding allowance certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

**(5) Form and contents of certificate**

Withholding allowance certificates shall be in such form and contain such information as the Secretary may by regulations prescribe.

**(6) Exemption of certain nonresident aliens**

Notwithstanding the provisions of paragraph (1), a nonresident alien individual (other than an individual described in section 3401(a)(6)(A) or (B)<sup>1</sup>) shall be entitled to only one withholding exemption.

**(7) Allowance where certificate with another employer is in effect**

If a withholding allowance certificate is in effect with respect to one employer, an employee shall not be entitled under a certificate in effect with any other employer to any withholding allowance which he has claimed under such first certificate.

**(g) Overlapping pay periods, and payment by agent or fiduciary**

If a payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee,

the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary under which the withholding allowance allowed to the employee in any calendar year shall approximate the withholding allowance allowable with respect to an annual payroll period.

**(h) Alternative methods of computing amount to be withheld**

The Secretary may, under regulations prescribed by him, authorize—

**(1) Withholding on basis of average wages**

An employer—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year,

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter (and, in the case of tips referred to in subsection (k), within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

**(2) Withholding on basis of annualized wages**

An employer to determine the amount of tax to be deducted and withheld upon a payment of wages to an employee for a payroll period by—

(A) multiplying the amount of an employee's wages for a payroll period by the num-

<sup>1</sup> See References in Text note below.

ber of such payroll periods in the calendar year.

(B) determining the amount of tax which would be required to be deducted and withheld upon the amount determined under subparagraph (A) if such amount constituted the actual wages for the calendar year and the payroll period of the employee were an annual payroll period, and

(C) dividing the amount of tax determined under subparagraph (B) by the number of payroll periods (described in subparagraph (A)) in the calendar year.

**(3) Withholding on basis of cumulative wages**

An employer, in the case of any employee who requests to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, to—

(A) add the amount of the wages to be paid to the employee for the payroll period to the total amount of wages paid by the employer to the employee during the calendar year,

(B) divide the aggregate amount of wages computed under subparagraph (A) by the number of payroll periods to which such aggregate amount of wages relates,

(C) compute the total amount of tax that would have been required to be deducted and withheld under subsection (a) if the average amount of wages (as computed under subparagraph (B)) had been paid to the employee for the number of payroll periods to which the aggregate amount of wages (computed under subparagraph (A)) relates,

(D) determine the excess, if any, of the amount of tax computed under subparagraph (C) over the total amount of tax deducted and withheld by the employer from wages paid to the employee during the calendar year, and

(E) deduct and withhold upon the payment of wages (referred to in subparagraph (A)) to the employee an amount equal to the excess (if any) computed under subparagraph (D).

**(4) Other methods**

An employer to determine the amount of tax to be deducted and withheld upon the wages paid to an employee by any other method which will require the employer to deduct and withhold upon such wages substantially the same amount as would be required to be deducted and withheld by applying subsection (a) or (c), either with respect to a payroll period or with respect to the entire taxable year.

**(i) Changes in withholding**

**(1) In general**

The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

**(2) Treatment as tax**

Any increased withholding under paragraph (1) shall for all purposes be considered tax required to be deducted and withheld under this chapter.

**(j) Noncash remuneration to retail commission salesman**

In the case of remuneration paid in any medium other than cash for services performed by

an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary such information with respect to such remuneration as the Secretary may by regulation prescribe.

**(k) Tips**

In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that the tax can be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (16)(B) of section 3401(a) is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds (including funds turned over under section 3102(c)(2) or section 3202(c)(2)) minus any tax required by section 3102(a) or section 3202(a) to be collected from such wages and funds.

**(l) Determination and disclosure of marital status**

**(1) Determination of status by employer**

For purposes of applying the tables in subsections (a) and (c) to a payment of wages, the employer shall treat the employee as a single person unless there is in effect with respect to such payment of wages a withholding allowance certificate furnished to the employer by the employee after the date of the enactment of this subsection indicating that the employee is married.

**(2) Disclosure of status by employee**

An employee shall be entitled to furnish the employer with a withholding allowance certificate indicating he is married only if, on the day of such furnishing, he is married (determined with the application of the rules in paragraph (3)). An employee whose marital status changes from married to single shall, at such time as the Secretary may by regulations prescribe, furnish the employer with a new withholding allowance certificate.

**(3) Determination of marital status**

For purposes of paragraph (2), an employee shall on any day be considered—

(A) as not married, if (i) he is legally separated from his spouse under a decree of divorce or separate maintenance, or (ii) either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien; or

(B) as married, if (i) his spouse (other than a spouse referred to in subparagraph (A)) died within the portion of his taxable year which precedes such day, or (ii) his spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, the employee reasonably expects, at the close of his taxable year, to be a surviving spouse (as defined in section 2(a)).

**(m) Withholding allowances**

Under regulations prescribed by the Secretary, an employee shall be entitled to an additional withholding allowance or additional reductions in withholding under this subsection. In determining the additional withholding allowance or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by such regulations)—

(1)<sup>2</sup> estimated itemized deductions allowable under chapter 1 and the estimated deduction allowed under section 199A (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62(a) (other than paragraph (10) thereof)),

(2) estimated tax credits allowable under chapter 1, and

(3) such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) and other items as may be specified by the Secretary in regulations.

**(n) Employees incurring no income tax liability**

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding allowance certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee—

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

**(o) Extension of withholding to certain payments other than wages**

**(1) General rule**

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) any supplemental unemployment compensation benefit paid to an individual,

(B) any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

**(2) Definitions**

**(A) Supplemental unemployment compensation benefits**

For purposes of paragraph (1), the term “supplemental unemployment compensation benefits” means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee’s involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee’s gross income.

**(B) Annuity**

For purposes of this subsection, the term “annuity” means any amount paid to an individual as a pension or annuity.

**(C) Sick pay**

For purposes of this subsection, the term “sick pay” means any amount which—

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

**(3) Amount withheld from annuity payments or sick pay**

If a payee makes a request that an annuity or any sick pay be subject to withholding under this chapter, the amount to be deducted and withheld under this chapter from any payment to which such request applies shall be an amount (not less than a minimum amount determined under regulations prescribed by the Secretary) specified by the payee in such request. The amount deducted and withheld with respect to a payment which is greater or less than a full payment shall bear the same relation to the specified amount as such payment bears to a full payment.

**(4) Request for withholding**

A request that an annuity or any sick pay be subject to withholding under this chapter—

(A) shall be made by the payee in writing to the person making the payments and shall contain the social security number of the payee,

<sup>2</sup> See Amendment of Subsection (m)(1) note below.

(B) shall specify the amount to be deducted and withheld from each full payment, and

(C) shall take effect—

(i) in the case of sick pay, with respect to payments made more than 7 days after the date on which such request is furnished to the payor, or

(ii) in the case of an annuity, at such time (after the date on which such request is furnished to the payor) as the Secretary shall by regulations prescribe.

Such a request may be changed or terminated by furnishing to the person making the payments a written statement of change or termination which shall take effect in the same manner as provided in subparagraph (C). At the election of the payor, any such request (or statement of change or revocation) may take effect earlier than as provided in subparagraph (C).

**(5) Special rule for sick pay paid pursuant to certain collective-bargaining agreements**

In the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers which contains a provision specifying that this paragraph is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of such sick pay—

(A) the requirement of paragraph (1)(C) that a request for withholding be in effect shall not apply, and

(B) except as provided in subsection (n), the amounts to be deducted and withheld under this chapter shall be determined in accordance with such agreement.

The preceding sentence shall not apply with respect to sick pay paid pursuant to any agreement to any individual unless the social security number of such individual is furnished to the payor and the payor is furnished with such information as is necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld.

**(6) Coordination with withholding on designated distributions under section 3405**

This subsection shall not apply to any amount which is a designated distribution (within the meaning of section 3405(e)(1)).

**(p) Voluntary withholding agreements**

**(1) Certain Federal payments**

**(A) In general**

If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

**(B) Amount withheld**

The amount to be deducted and withheld under this chapter from any payment to

which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c),<sup>1</sup> or such other percentage as is permitted under regulations prescribed by the Secretary.

**(C) Specified Federal payments**

For purposes of this paragraph, the term “specified Federal payment” means—

(i) any payment of a social security benefit (as defined in section 86(d)),

(ii) any payment referred to in the second sentence of section 451(d)<sup>1</sup> which is treated as insurance proceeds,

(iii) any amount which is includible in gross income under section 77(a), and

(iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.

**(D) Requests for withholding**

Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).

**(2) Voluntary withholding on unemployment benefits**

If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 10 percent of such payment.

**(3) Authority for other voluntary withholding**

The Secretary is authorized by regulations to provide for withholding—

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

**(q) Extension of withholding to certain gambling winnings****(1) General rule**

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c)<sup>1</sup> and such payment.

**(2) Exemption where tax otherwise withheld**

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

**(3) Winnings which are subject to withholding**

For purposes of this subsection, the term “winnings which are subject to withholding” means proceeds from a wager determined in accordance with the following:

**(A) In general**

Except as provided in subparagraphs (B) and (C), proceeds of more than \$5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

**(B) State-conducted lotteries**

Proceeds of more than \$5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

**(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries**

Proceeds of more than \$5,000 from—

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

**(4) Rules for determining proceeds from a wager**

For purposes of this subsection—

(A) proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B) proceeds which are not money shall be taken into account at their fair market value.

**(5) Exemption for bingo, keno, and slot machines**

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

**(6) Statement by recipient**

Every person who is to receive a payment of winnings which are subject to withholding

shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

**(7) Coordination with other sections**

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

**(r) Extension of withholding to certain taxable payments of Indian casino profits****(1) In general**

Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

**(2) Exception**

The tax imposed by paragraph (1) shall not apply to any payment to the extent that the payment, when annualized, does not exceed an amount equal to the sum of—

(A) the basic standard deduction (as defined in section 63(c)) for an individual to whom section 63(c)(2)(C)<sup>1</sup> applies, and

(B) the exemption amount (as defined in section 151(d)).

**(3) Annualized tax**

For purposes of paragraph (1), the term “annualized tax” means, with respect to any payment, the amount of tax which would be imposed by section 1(c)<sup>1</sup> (determined without regard to any rate of tax in excess of the fourth lowest rate of tax applicable under section 1(c)<sup>1</sup>) on an amount of taxable income equal to the excess of—

(A) the annualized amount of such payment, over

(B) the amount determined under paragraph (2).

**(4) Classes of gaming activities, etc.**

For purposes of this subsection, terms used in paragraph (1) which are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this subsection, shall have the respective meanings given such terms by such section.

**(5) Annualization**

Payments shall be placed on an annualized basis under regulations prescribed by the Secretary.

**(6) Alternate withholding procedures**

At the election of an Indian tribe, the tax imposed by this subsection on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).



**(7) Coordination with other sections**

For purposes of this chapter and so much of subtitle F as relates to this chapter, payments to any person which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.

**(s) Exemption from withholding for any vehicle fringe benefit****(1) Employer election not to withhold**

The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is included by the employer on a statement timely furnished under section 6051.

**(2) Employer must furnish W-2**

Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for purposes of section 6051.

**(3) Vehicle fringe benefit**

For purposes of this subsection, the term “vehicle fringe benefit” means any fringe benefit—

- (A) which constitutes wages (as defined in section 3401), and
- (B) which consists of providing a highway motor vehicle for the use of the employee.

**(t) Rate of withholding for certain stock**

In the case of any qualified stock (as defined in section 83(i)(2)) with respect to which an election is made under section 83(i)—

- (1) the rate of tax under subsection (a) shall not be less than the maximum rate of tax in effect under section 1, and
- (2) such stock shall be treated for purposes of section 3501(b) in the same manner as a non-cash fringe benefit.

(Aug. 16, 1954, ch. 736, 68A Stat. 457; Aug. 9, 1955, ch. 666, § 2, 69 Stat. 605; Pub. L. 87-256, § 110(g)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 88-272, title III, § 302(a), (b), Feb. 26, 1964, 78 Stat. 140; Pub. L. 89-97, title III, § 313(d)(3)-(5), July 30, 1965, 79 Stat. 384; Pub. L. 89-212, § 2(c), Sept. 29, 1965, 79 Stat. 859; Pub. L. 89-368, title I, § 101(a)-(e)(3), Mar. 15, 1966, 80 Stat. 38-61; Pub. L. 90-364, title I, § 102(c), June 28, 1968, 82 Stat. 256; Pub. L. 91-36, § 2(a), June 30, 1969, 83 Stat. 42; Pub. L. 91-53, § 6(a), Aug. 7, 1969, 83 Stat. 96; Pub. L. 91-172, title VIII, § 805(a)-(e), (f)(1), (g), Dec. 30, 1969, 83 Stat. 686, 704-708; Pub. L. 92-178, title II, § 208(a), (b)(1), (c)-(h)(1), Dec. 10, 1971, 85 Stat. 512-517; Pub. L. 94-12, title II, §§ 202(b), 205, Mar. 29, 1975, 89 Stat. 29, 32; Pub. L. 94-164, § 2(b)(2), 5(a)(1), Dec. 23, 1975, 89 Stat. 971, 975; Pub. L. 94-331, § 3(a)(1), June 30, 1976, 90 Stat. 782; Pub. L. 94-396, § 2(a)(1), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94-414, § 3(a)(1), Sept. 17, 1976, 90 Stat. 1273; Pub. L. 94-455, title IV, § 401(d), title V, §§ 502(b), 504(c)(3), title XII, § 1207(d), title XIX, §§ 1903(a)(17), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat.

1557, 1559, 1566, 1705, 1810, 1834; Pub. L. 95-30, title I, § 105, title IV, § 405(a), May 23, 1977, 91 Stat. 140, 156; Pub. L. 95-600, title I, §§ 101(e), 102(c), title VI, § 601(b)(2), Nov. 6, 1978, 92 Stat. 2770, 2771, 2896; Pub. L. 96-601, § 4(a)-(d), Dec. 24, 1980, 94 Stat. 3496, 3497; Pub. L. 97-34, title I, § 101(e), Aug. 13, 1981, 95 Stat. 184; Pub. L. 97-248, title III, §§ 317(a), 334(d), Sept. 3, 1982, 96 Stat. 607, 627; Pub. L. 98-67, title I, § 104(d)(3), Aug. 5, 1983, 97 Stat. 380; Pub. L. 99-44, § 3, May 24, 1985, 99 Stat. 77; Pub. L. 99-514, title I, § 104(b)(15), title XIII, §§ 1301(j)(8), 1303(b)(4), title XV, § 1581(b), Oct. 22, 1986, 100 Stat. 2106, 2658, 2766; Pub. L. 100-203, title X, § 10302(a), Dec. 22, 1987, 101 Stat. 1330-429; Pub. L. 100-647, title I, § 1003(a)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101-508, title XI, § 11801(a)(41), Nov. 5, 1990, 104 Stat. 1388-521; Pub. L. 102-318, title V, § 522(b)(2)(D), July 3, 1992, 106 Stat. 314; Pub. L. 102-486, title XIX, §§ 1934(a), 1942(a), Oct. 24, 1992, 106 Stat. 3031, 3036; Pub. L. 103-465, title VII, §§ 701(a), 702(a), Dec. 8, 1994, 108 Stat. 4995, 4996; Pub. L. 107-16, title I, § 101(c)(6)-(9), June 7, 2001, 115 Stat. 43, 44; Pub. L. 109-222, title V, § 511(a), May 17, 2006, 120 Stat. 364; Pub. L. 112-56, title I, § 102(a), Nov. 21, 2011, 125 Stat. 712; Pub. L. 115-97, title I, §§ 11011(b)(4), 11041(c)(1), (2)(B)-(E), 11051(b)(2)(B), 13603(b)(2), Dec. 22, 2017, 131 Stat. 2070, 2082-2084, 2089, 2163.)

**AMENDMENT OF SUBSECTION (m)(1)**

*Pub. L. 115-97, title I, § 11051(b)(2)(B), (c), Dec. 22, 2017, 131 Stat. 2089, 2090, amended subsection (m)(1) of this section, applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification. After amendment, subsection (m)(1) reads as follows:*

*(1) estimated itemized deductions allowable under chapter 1 and the estimated deduction allowed under section 199A (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62(a)),*

*See 2017 Amendment note below.*

**REFERENCES IN TEXT**

Paragraph (6) of section 3401(a), referred to in subsec. (f)(6), was struck out and a new paragraph (6) was added by Pub. L. 89-809, title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554.

The date of the enactment of this subsection, referred to in subsec. (l)(1), is the date of enactment of Pub. L. 89-368, which was approved Mar. 15, 1966.

Section 1(c), referred to in subssecs. (p)(1)(B), (q)(1), and (r)(3), to be treated, for purposes of the rate of tax, as a reference to the corresponding rate bracket under section 1(j)(2)(C) of this title, with additional exception for reference in subsec. (q)(1), see section 1(j)(2)(F) of this title.

Section 451(d), referred to in subsec. (p)(1)(C)(ii), was redesignated section 451(f) by Pub. L. 115-97, title I, § 13221(a), (b), Dec. 22, 2017, 131 Stat. 2113, 2115.

Section 63(c)(2)(C), referred to in subsec. (r)(2)(A), was redesignated section 63(c)(2)(D), and a new section 63(c)(2)(C) was added, by Pub. L. 107-147, title IV, § 411(e)(1)(C), (D), Mar. 9, 2002, 116 Stat. 46.

Section 4 of the Indian Gaming Regulatory Act, referred to in subsec. (r)(4), is classified to section 2703 of Title 25, Indians.

The date of the enactment of this subsection, referred to in subsec. (r)(4), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

#### AMENDMENTS

2017—Subsec. (a)(2). Pub. L. 115-97, §11041(c)(1), substituted “means the amount by which the wages exceed the taxpayer’s withholding allowance, prorated to the payroll period.” for “means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.”

Subsec. (b)(1), (2). Pub. L. 115-97, §11041(c)(2)(C), substituted “allowance” for “exemption” in two places.

Subsec. (f). Pub. L. 115-97, §11041(c)(2)(D), substituted “allowance” for “exemptions” in heading.

Subsec. (f)(1), (2). Pub. L. 115-97, §11041(c)(2)(B), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) related to allowed withholding exemptions and withholding exemption certificates, respectively.

Subsec. (f)(3) to (5). Pub. L. 115-97, §11041(c)(2)(C), substituted “allowance” for “exemption” wherever appearing.

Subsec. (f)(7). Pub. L. 115-97, §11041(c)(2)(C), which directed substitution of “allowance” for “exemption” in heading, was executed by substituting “Allowance” for “Exemption” to reflect the probable intent of Congress.

Pub. L. 115-97, §11041(c)(2)(C), substituted “allowance” for “exemption” in two places.

Subsec. (g). Pub. L. 115-97, §11041(c)(2)(C), which directed amendment of par. (4) of subsec. (g) by substituting “allowance” for “exemption” wherever appearing, was executed to concluding provisions of subsec. (g) in two places to reflect the probable intent of Congress.

Subsec. (l)(1), (2). Pub. L. 115-97, §11041(c)(2)(C), substituted “allowance” for “exemption” wherever appearing.

Subsec. (m). Pub. L. 115-97, §11041(c)(2)(E), substituted “an additional withholding allowance or additional reductions in withholding under this subsection. In determining the additional withholding allowance” for “additional withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances”.

Subsec. (m)(1). Pub. L. 115-97, §11051(b)(2)(B), struck out “(other than paragraph (10) thereof)” after “section 62(a)”.

Pub. L. 115-97, §11011(b)(4), inserted “and the estimated deduction allowed under section 199A” after “chapter 1”.

Subsec. (n). Pub. L. 115-97, §11041(c)(2)(C), substituted “allowance” for “exemption” in introductory provisions.

Subsec. (t). Pub. L. 115-97, §13603(b)(2), added subsec. (t).

2011—Subsec. (t). Pub. L. 112-56 struck out subsec. (t) which related to extension of 3 percent withholding to certain payments made by Government entities for property or services.

2006—Subsec. (t). Pub. L. 109-222 added subsec. (t).

2001—Subsec. (p)(1)(B). Pub. L. 107-16, §101(c)(6), substituted “7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c),” for “7, 15, 28, or 31 percent”.

Subsec. (p)(2). Pub. L. 107-16, §101(c)(7), substituted “10 percent” for “15 percent”.

Subsec. (q)(1). Pub. L. 107-16, §101(c)(8), substituted “equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment” for “equal to 28 percent of such payment”.

Subsec. (r)(3). Pub. L. 107-16, §101(c)(9), substituted “the fourth lowest rate of tax applicable under section 1(c)” for “31 percent” in introductory provisions.

1994—Subsec. (p). Pub. L. 103-465, §702(a), reenacted heading without change and amended text of subsec. (p) generally. Prior to amendment, text read as follows: “The Secretary is authorized by regulations to provide for withholding—

“(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

“(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter, if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.”

Subsec. (r). Pub. L. 103-465, §701(a), added subsec. (r). 1992—Subsec. (o)(6). Pub. L. 102-318 substituted “3405(e)(1)” for “3405(d)(1)”.

Subsec. (q)(1). Pub. L. 102-486, §1934(a), substituted “28 percent” for “20 percent”.

Subsec. (q)(3)(A), (C). Pub. L. 102-486, §1942(a), substituted “\$5,000” for “\$1,000”.

1990—Subsec. (a)(3). Pub. L. 101-508 struck out par. (3) which read as follows: “Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) to reflect—

“(A) the amendments made by section 101(b) of the Economic Recovery Tax Act of 1981, and such modification shall take effect on October 1, 1981, as if such amendments made a 5-percent reduction effective on such date, and

“(B) the amendments made by section 101(a) of such Act, and such modifications shall take effect—

“(i) on July 1, 1982, as if the reductions in the rate of tax under section 1 (as amended by such section) were attributable to a 10-percent reduction effective on such date, and

“(ii) on July 1, 1983, as if such reductions were attributable to a 10-percent reduction effective on such date.”

1988—Subsec. (m)(1). Pub. L. 100-647 substituted “section 62(a) (other than paragraph (10) thereof)” for “section 62) (other than paragraph (13) thereof)”.

1987—Subsec. (f)(3)(B). Pub. L. 100-203 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term ‘status determination date’ means January 1, May 1, July 1, and October 1 of each year.”

1986—Subsec. (f)(1). Pub. L. 99-514, §104(b)(15)(F), substituted “standard deduction” for “zero bracket” and “subparagraph (E)” for “subparagraph (G)” in last sentence.

Subsec. (f)(1)(A). Pub. L. 99-514, §104(b)(15)(B), inserted “unless he is an individual described in section 151(d)(2)” after “himself”.

Subsec. (f)(1)(B). Pub. L. 99-514, §104(b)(15)(A), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: “one additional exemp-

tion for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c)(1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit.”.

Pub. L. 99-514, §104(b)(15)(C), which directed that “subparagraph (A) or (D)” be substituted for “subparagraph (A), (B), (C), or (F)” was executed by making the substitution for “subparagraph (A), (B), or (C)”, as the probable intent of Congress.

Subsec. (f)(1)(C). Pub. L. 99-514, §104(b)(15)(A), (D), redesignated subpar. (E) as (C), substituted “section 151(c)” for “section 151(e)”, and struck out former subpar. (C) which read as follows: “one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit.”.

Subsec. (f)(1)(D). Pub. L. 99-514, §104(b)(15)(A), redesignated subpar. (F) as (D). Former subpar. (D) redesignated (B).

Subsec. (f)(1)(E). Pub. L. 99-514, §104(b)(15)(A), (E), redesignated subpar. (G) as (E) and substituted “standard deduction” for “zero bracket”. Former subpar. (E) redesignated (C).

Pub. L. 99-514, §1301(j)(8), substituted “section 7703” for “section 143”.

Subsec. (f)(1)(F), (G). Pub. L. 99-514, §104(b)(15)(A), redesignated subpars. (F) and (G) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 99-514, §1581(b), struck out “or decreases” after “increases”.

Subsec. (m)(3). Pub. L. 99-514, §104(b)(15)(G), inserted “(including the additional standard deduction under section 63(c)(3) for the aged and blind)”.

Subsec. (r). Pub. L. 99-514, §1303(b)(4), struck out subsec. (r) which provided for extension of withholding to GSOC distributions.

1985—Subsec. (s). Pub. L. 99-44 added subsec. (s).

1983—Subsec. (s). Pub. L. 98-67 struck out subsec. (s) which related to extension of withholding to certain payments where identifying number was not furnished or was inaccurate. See section 3406 of this title.

1982—Subsec. (o)(6). Pub. L. 97-248, §334(d), added par. (6).

Subsec. (s). Pub. L. 97-248, §317(a), added subsec. (s).

1981—Subsec. (a). Pub. L. 97-34, §101(e)(1), revised subsec. (a) generally to provide for a 5-percent reduction in income tax withholding rates on Oct. 1, 1981, a further 10-percent reduction on July 1, 1982, and a final 10-percent reduction on July 1, 1983.

Subsec. (b)(1). Pub. L. 97-34, §101(e)(2)(A), redesignated par. (2) as (1). Former par. (1), which set out a table for determining amount of one withholding exemption for each of the various payroll periods, was struck out.

Subsec. (b)(2). Pub. L. 97-34, §101(e)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 97-34, §101(e)(2)(A), (B), redesignated par. (4) as (3) and substituting provisions relating to an employer's computation of the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period, for provisions relating to an employer's computation of the tax to be deducted and withheld using the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period. Former par. (3) redesignated (2).

Subsec. (b)(4), (5). Pub. L. 97-34, §101(e)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(1)(G). Pub. L. 97-34, §101(e)(3), inserted “(or more than one exemption if so prescribed by the Secretary)” after “an amount equal to one exemption”.

Subsec. (i). Pub. L. 97-34, §101(e)(4), substituted provisions authorizing the Secretary by regulations to pro-

vide for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes, for provisions under which the Secretary was authorized to provide withholding in addition to that otherwise required under this section in cases in which the employer and the employee agreed to such additional withholding.

Subsec. (m). Pub. L. 97-34, §101(e)(5), revised provisions respecting additional withholding allowances for anticipated excess itemized deductions and tax credits claimed in accordance with Treasury regulations and Treasury statutory authority to provide additional withholding allowances for any additional items specified in Treasury regulations.

1980—Subsec. (o)(1)(C). Pub. L. 96-601, §4(a), added subpar. (C).

Subsec. (o)(2)(B). Pub. L. 96-601, §4(d), struck out “, but only to the extent that the amount is includible in the gross income of such individual” after “pension or annuity”.

Subsec. (o)(2)(C). Pub. L. 96-601, §4(c), added subpar. (C).

Subsec. (o)(3). Pub. L. 96-601, §4(b), substituted provision authorizing amount to be withheld from annuity payments or sick pay for provision relating to request for withholding. See subsec. (o)(4) of this section.

Subsec. (o)(4), (5). Pub. L. 96-601, §4(b), added pars. (4) and (5).

1978—Subsec. (a). Pub. L. 95-600, §101(e)(1), substituted “With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978.” for “With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977.”.

Subsec. (b)(1). Pub. L. 95-600, §102(c)(1), increased the amounts set out in the table for one withholding exemption for each of the payroll period categories from \$14.40, \$28.80, \$31.30, \$62.50, \$187.50, \$375.00, \$750.00 and \$2.10 to \$19.23, \$38.46, \$41.66, \$83.33, \$250.00, \$500.00, \$1,000.00 and \$2.74, respectively.

Subsec. (m)(1). Pub. L. 95-600, §101(e)(2), 102(c)(2), substituted “\$1,000” for “\$750”, “\$3,400” for “\$3,200” and “\$2,300” for “\$2,200”.

Subsec. (r). Pub. L. 95-600, §601(b)(2), added subsec. (r).

1977—Subsec. (a). Pub. L. 95-30, §105(a), substituted “With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977” for

“With respect to wages paid prior to January 1, 1978, the tables so prescribed shall be the same as the tables prescribed under this section which were in effect on January 1, 1976. With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976”.

Subsec. (f)(1). Pub. L. 95-30, §105(b)(1), substituted “zero bracket” for “standard deduction” in subpar. (G) and in provisions following subpar. (G).

Subsec. (m)(1)(B). Pub. L. 95-30, §105(b)(2), substituted “an amount equal to \$3,200 (\$2,200)” for “an amount equal to the lesser of (i) 16 percent of his estimated wages, or (ii) \$2,800 (\$2,400)”.

Subsec. (m)(2)(A). Pub. L. 95-30, §105(b)(3)(A), (B), substituted “section 151” for “sections 141 and 151” and “(or the zero bracket amount (within the meaning of section 63(d)))” for “(or the amount of the standard deduction)”.

Subsec. (m)(2)(C). Pub. L. 95-30, §105(b)(3)(C), substituted “(or the zero bracket amount)” for “(or the standard deduction)”.

Subsec. (q)(3)(C). Pub. L. 95-30, §405(a), inserted reference to certain parimutuel pools and jai alai in heading and, in text, designated existing provisions as cl. (i) and added cl. (ii).

1976—Subsec. (a). Pub. L. 94-455, §§401(d)(1), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, inserted “With respect to wages paid prior to January 1, 1978” after “by the Secretary”, as amended, and substituted “prescribed under this section which were” for “contained in this subsection as” after “same as the tables”, “1976” for “1975” after “January 1”, and “With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976” for “except that the amounts set forth as amounts of income tax to be withheld with respect to wages paid after April 30, 1975, and before January 1, 1976, shall reflect the full calendar year effect for 1975 of the amendments made by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975” after “effect on January 1, 1976”, as amended.

Pub. L. 94-414 substituted “October 1, 1976” for “September 15, 1976”.

Pub. L. 94-396 substituted “September 15, 1976” for “September 1, 1976”.

Pub. L. 94-331 substituted “September 1, 1976” for “July 1, 1976”.

Subsec. (c)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(6). Pub. L. 94-455, §§401(d)(2), 1906(b)(13)(A), substituted “the table for an annual payroll period prescribed pursuant to subsection (a)” for “table 7 contained in subsection (a)” after “basis of the”, as subsec. (c)(6) was in effect on the day before the date of enactment of the Tax Reduction Act of 1975, Pub. L. 94-12, which was approved on Mar. 29, 1975, and struck out “or his delegate” after “Secretary”.

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

Subsec. (l). Pub. L. 94-455, §1903(a)(17), substituted “section 2(a)” for “section 2(b)” after “as defined in”.

Subsec. (m)(1)(B). Pub. L. 94-455, §401(d)(3), reenacted subpar. (B) without change.

Subsec. (m)(2)(A). Pub. L. 94-455, §502(b), inserted “(other than paragraph (13) thereof)” after “under section 62”.

Subsec. (m)(2)(D), (3)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (m)(4). Pub. L. 94-455, §504(c)(3), added subpar. (C). §1906(b)(13)(A) struck out “or his delegate” after “Secretary”.

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

Subsec. (q). Pub. L. 94-455, §1207(d), added subsec. (q). 1975—Subsec. (a). Pub. L. 94-164, §5(a)(1), inserted provision that the tables prescribed with respect to wages paid after Dec. 31, 1975, and before July 1, 1976, shall be the same as the tables prescribed under this subsection which were in effect on Dec. 10, 1975.

Pub. L. 94-12, §205(a), substituted provisions directing the Secretary to prescribe new withholding tables setting changed withholding rates for wages paid during the period May 1, 1975, to Dec. 31, 1975, so as to reflect the full calendar year effect for 1975 of the amendments to the minimum standard deduction, the percentage standard deduction, the earned income credit, and the additional tax credit by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975, Pub. L. 94-12, for provisions setting out 8 tables to be followed by employers in withholding taxes on wages paid.

Subsec. (c)(6). Pub. L. 94-12, §205(b), substituted “the table for an annual payroll period prescribed pursuant to subsection (a)” for “table 7 contained in subsection (a)”. See 1976 Amendment note set out above.

Subsec. (m)(1)(B). Pub. L. 94-164, §2(b)(2), substituted “\$2,800” and “\$2,400” for “\$2,600” and “\$2,300” respectively in cl. (ii).

Pub. L. 94-12, §202(b), substituted “the lesser of (i) 16 percent of his estimated wages, or (ii) \$2,600 (\$2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a)))” for “the lesser of (i) \$2,000 or (ii) 15 percent of his estimated wages”.

1971—Subsec. (a). Pub. L. 92-178, §208(a), substituted new sets of tables 1 to 8 applicable (under §208(i)(1)) with respect to wages paid after Jan. 15, 1972, for the tables applicable in the case of wages paid as provided in former: par. (1) after Dec. 31, 1969, and before July 1, 1970; par. (2) after June 30, 1970, and before Jan. 1, 1971; par. (3) after Dec. 31, 1970, and before Jan. 1, 1972; par. (4) after Dec. 31, 1971, and before Jan. 1, 1973; and par. (5) after Dec. 31, 1972. Pub. L. 92-178, §208(h)(1), made provisions of par. (3) applicable (under section 208(i)(2)) with respect to wages paid after Dec. 31, 1971, and before Jan. 16, 1972.

Subsec. (b)(1). Pub. L. 92-178, §208(b)(1), revised withholding rates upwards, substituting 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10 for 12.50; 25.00 27.10; 54.20; 162.50; 325.00; 650.00; and 1.80, respectively, to be effective with respect to wages paid after Jan. 15, 1972. Pub. L. 92-178, §208(h)(2), in amending Pub. L. 91-172, §805(b)(1), extended application of such former withholding rates to wages paid after June 30, 1970, and before Jan. 16, 1972, previously applicable to wages paid before Jan. 1, 1972.

Subsec. (c)(6). Pub. L. 92-178, §208(g), substituted “table 7 contained in subsection (a)” for “table 7 contained in paragraph (1), (2), (3), (4), or (5) (whichever is applicable) of subsection (a)”.

Subsec. (f)(1)(G). Pub. L. 92-178, §208(c), added subpar. (G).

Subsec. (f)(7). Pub. L. 92-178, §208(d), added par. (7).

Subsec. (m)(1)(B). Pub. L. 92-178, §208(e), substituted “an amount equal to the lesser of (i) \$2,000 or (ii) 15 percent of his estimated wages” for “an amount equal to 15 percent of his estimated wages”.

Subsec. (m)(2)(A). Pub. L. 92-178, §208(f)(1), inserted “or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year” after “for the taxable year preceding the estimation year”.

Subsec. (m)(2)(D). Pub. L. 92-178, §208(f)(2), substituted as definition of “estimation year” the calendar year in which the wages are paid for prior provision defining term as meaning “(i) with respect to payments of wages after April 30 and on or before December 31 of any calendar year, such calendar year, and (ii) with respect to payments of wages on or after January 1 and before May 1 of any calendar year, the preceding cal-

endar year (except that with respect to an exemption certificate furnished by an employee after he has filed his return for the preceding calendar year, such term means the current calendar year)."

Subsec. (m)(3)(B) to (E). Pub. L. 92-178, §208(f)(3), struck out subpars. (B) and (C) providing that only one certificate be in effect and for termination of effectiveness of certificate and redesignated subpars. (D) and (E) as (B) and (C), respectively.

1969—Subsec. (a)(1). Pub. L. 91-172, §805(a), (b)(2), substituted new sets of tables 1 to 8 for application to wages paid after Dec. 31, 1969, and before July 1, 1970, and after June 30, 1970, and before January 1, 1972, for the tables applicable to wages paid before July 13, 1968, and after Dec. 31, 1969.

Pub. L. 91-53, §6(a)(1), substituted "December 31, 1969" for "July 31, 1969".

Pub. L. 91-36, §2(a)(1), substituted "July 31, 1969" for "June 30, 1969".

Subsec. (a)(2). Pub. L. 91-172, §805(a), substituted a set of tables 1 to 8 for application to wages paid after June 30, 1970, and before Jan. 1, 1971, for the tables applicable to wages paid after June 30, 1970, and before Jan. 1, 1970.

Pub. L. 91-53, §6(a)(2), substituted "January 1, 1970" for "August 1, 1969".

Pub. L. 91-36, §2(a)(2), substituted "August 1, 1969" for "July 1, 1969".

Subsec. (a)(3) to (5). Pub. L. 91-172, §805(a), added sets of tables applicable, respectively, to wages paid after Dec. 31, 1970, and before Jan. 1, 1972, after Dec. 31, 1971, and before Jan. 1, 1973, and after Dec. 31, 1972.

Subsec. (b)(1). Pub. L. 91-172, §805(b)(1)-(4), revised withholding rates effective with respect to wages paid after Dec. 31, 1969, and before July 1, 1970, for the period after June 30, 1970, and before Jan. 1, 1972, during 1972, and after 1972.

Subsec. (c)(1). Pub. L. 91-172, §805(c)(1), substituted provisions authorizing employer to deduct and withhold tax determinable according to tables prescribed by the Secretary or his delegate for provisions under which the employer was authorized to deduct and withhold tax only according to tables set out.

Subsec. (c)(6). Pub. L. 91-172, §805(c)(2), substituted provisions for determination of amount deductible according to tables prescribed by the Secretary or his delegate and for computation of wages and amounts of income tax after Dec. 31, 1969, for provisions for determination of such wages and amounts of income tax after July 13, 1968, and before Jan. 1, 1970.

Pub. L. 91-53, §6(a)(3), substituted "January 1, 1970" for "August 1, 1969".

Pub. L. 91-36, §2(a)(3), substituted "August 1, 1969" for "July 1, 1969".

Subsec. (h). Pub. L. 91-172, §805(d), redesignated existing pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added pars. (2) to (4).

Subsec. (m)(1). Pub. L. 91-172, §805(e)(2), substituted \$750 for \$700 in the material preceding subpar. (A) and in subpar. (B) substituted 15 per cent for 10 per cent of the first \$7,500 and 17 per cent of remainder of the estimated wages.

Subsec. (m)(2)(A). Pub. L. 91-172, §805(e)(2), inserted amount of standard deduction as an alternative limit in cl. (i), and substituted the determinable additional deductions for provisions referring to an employee who did not show such deductions on his return.

Subsec. (m)(2)(B). Pub. L. 91-172, §805(e)(2), struck out limit on aggregate amount.

Subsec. (m)(2)(C), (D). Pub. L. 91-172, §805(e)(1), (2), added subpar. (C). Former subpar. (C) redesignated (D)

Subsec. (n). Pub. L. 91-172, §805(f)(1), added subsec. (n).

Subsecs. (o), (p). Pub. L. 91-172, §805(g), added subsecs. (o) and (p).

1968—Subsec. (a). Pub. L. 90-364, §102(c)(1), designated existing Tables 1 to 8 as constituting par. (1), inserted provisions preceding existing Table 1-8 so as to limit their application to the case of wages paid on or before the 15th day after the date of the enactment of the Revenue and Expenditure Control Act of 1968 or after June 30, 1969, and added par. (2).

Subsec. (c)(6). Pub. L. 90-364, §102(c)(2), added par. (6). 1966—Subsec. (a). Pub. L. 89-368, §101(a), struck out reference to subsections (j) and (k) and substituted provisions establishing separate tables for single persons and for married persons in each of eight payroll period categories each containing six graduated withholding rates ranging from 14 to 30 percent for provisions placing the rate at a fixed 14 percent.

Subsec. (b)(1). Pub. L. 89-368, §101(b), increased amounts set out for one withholding exemption for each of the payroll period categories from "\$13.00", "\$26.00", "\$28.00", "\$56.00", "\$167.00", "\$333.00", "\$667.00", and "\$1.80" to "\$13.50", "\$26.90", "\$29.20", "\$58.30", "\$175.00", "\$350.00", "\$700.00", and "\$1.90" respectively.

Subsec. (c)(1). Pub. L. 89-368, §101(c), replaced existing tables with separate tables for employees who are married and for employees who are not married covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay periods and reflecting increased and graduated withholding rates.

Subsec. (f)(1)(F), (3)(B). Pub. L. 89-368, §101(e)(1), (3), added par. (1)(F) and, in par. (3)(B), changed definition of "status determination date" from January 1 and July 1 of each year to January 1, May 1, July 1, and October 1 of each year.

Subsec. (l). Pub. L. 89-368, §101(d), added subsec. (l).

Subsec. (m). Pub. L. 89-368, §101(e)(2), added subsec. (m).

1965—Subsec. (a). Pub. L. 89-97, §313(d)(3), substituted "subsections (j) and (k)" for "subsection (j)".

Subsec. (h)(3). Pub. L. 89-97, §313(d)(4), inserted "(and, in the case of tips referred to in subsection (k), within 30 days thereafter)" after "quarter" first place it appears.

Subsec. (k). Pub. L. 89-212 inserted "or section 3202 (c)(2)" and "or section 3202(a)".

Pub. L. 89-97, §313(d)(5), added subsec. (k).

1964—Subsec. (a). Pub. L. 88-272, §302(a), reduced tax from 18% to 14%.

Subsec. (c)(1). Pub. L. 88-272, §302(b), substituted new tables reflecting lowered withholding rates.

1961—Subsec. (f)(6). Pub. L. 87-256 added par. (6).

1955—Subsec. (a). Act Aug. 9, 1955, §2(a), inserted "(except as provided in subsection (j))" after "upon such wages".

Subsec. (j). Act Aug. 9, 1955, §2(b), added subsec. (j).

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 1101(b)(4) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 1101(e) of Pub. L. 115-97, set out as a note under section 62 of this title.

Amendment by section 11041(c)(1), (2)(B)-(E) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, with allowance for Secretary of the Treasury to administer this section for taxable years beginning before Jan. 1, 2019, without regard to the amendments made by subsecs. (a) and (c) of Pub. L. 115-97, see section 11041(f) of Pub. L. 115-97, set out as a note under section 151 of this title.

Amendment by section 11051(b)(2)(B) of Pub. L. 115-97 applicable to any divorce or separation instrument (as defined in former section 71(b)(2) of this title as in effect before Dec. 22, 2017) executed after Dec. 31, 2018, and to such instruments executed on or before Dec. 31, 2018, and modified after Dec. 31, 2018, if the modification expressly provides that the amendment made by section 11051 of Pub. L. 115-97 applies to such modification, see section 11051(c) of Pub. L. 115-97, set out as a note under section 61 of this title.

Amendment by section 13603(b)(2) of Pub. L. 115-97 applicable to stock attributable to options exercised, or restricted stock units settled, after Dec. 31, 2017, see section 13603(f)(1) of Pub. L. 115-97, set out as a note under section 83 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-56, title I, §102(b), Nov. 21, 2011, 125 Stat. 712, provided that: "The amendment made by this sec-

tion [amending this section] shall apply to payments made after December 31, 2011.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-222, title V, § 511(b), May 17, 2006, 120 Stat. 365, as amended by Pub. L. 111-5, div. B, title I, § 1511, Feb. 17, 2009, 123 Stat. 355, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011.”

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, § 701(b), Dec. 8, 1994, 108 Stat. 4996, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 1994.”

Amendment by section 702(a) of Pub. L. 103-465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103-465, set out as a note under section 3304 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102-486, title XIX, § 1934(b), Oct. 24, 1992, 106 Stat. 3032, provided that: “The amendment made by this section [amending this section] applies to payments received after December 31, 1992.”

Pub. L. 102-486, title XIX, § 1942(b), Oct. 24, 1992, 106 Stat. 3036, provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments of winnings after December 31, 1992.”

Amendment by Pub. L. 102-318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102-318, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, § 10302(b), Dec. 22, 1987, 101 Stat. 1330-429, provided that: “The amendment made by subsection (a) [amending this section] shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act [Dec. 22, 1987].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(15) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1303(b)(4) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

#### EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-44, § 6(d), May 24, 1985, 99 Stat. 79, provided that: “The amendment made by section 3 [amending this section] shall take effect on January 1, 1985.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a)

of Pub. L. 98-67, set out as a note under section 31 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title III, § 317(b), Sept. 3, 1982, 96 Stat. 610, provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments made after December 31, 1983.”

Amendment by section 334(d) of Pub. L. 97-248 applicable to payments or other distributions made after Dec. 31, 1982, see section 334(e) of Pub. L. 97-248, set out as an Effective Date note under section 3405 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title I, § 101(f)(2), Aug. 13, 1981, 95 Stat. 185, provided that: “The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after September 30, 1981; except that the amendment made by subsection (e)(5) [amending this section] shall apply to remuneration paid after December 31, 1981.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-601, § 4(f), Dec. 24, 1980, 94 Stat. 3498, provided that: “The amendments made by this section [amending this section and section 6051 of this title] shall apply to payments made on or after the first day of the first calendar month beginning more than 120 days after the date of the enactment of this Act [Dec. 24, 1980].”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title I, § 101(f)(2), Nov. 6, 1978, 92 Stat. 2771, provided that: “The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after December 31, 1978.”

Pub. L. 95-600, title I, § 102(d)(2), Nov. 6, 1978, 92 Stat. 2771, provided that: “The amendments made by subsection (c) [amending this section] shall apply with respect to remuneration paid after December 31, 1978.”

Amendment by section 601(b)(2) of Pub. L. 95-600 applicable with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as a note under section 172 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-30, title I, § 106(b), May 23, 1977, 91 Stat. 141, provided that: “The amendments made by section 105 [amending this section] shall apply to wages paid after April 30, 1977.”

Pub. L. 95-30, title IV, § 405(b), May 23, 1977, 91 Stat. 156, provided that: “The amendments made by this section [amending this section] apply to payments made after April 30, 1977.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 401(d) of Pub. L. 94-455 applicable to wages paid after Sept. 14, 1976, see section 401(e) of Pub. L. 94-455, set out as a note under section 32 of this title.

Pub. L. 94-455, title XII, § 1207(f)(3), Oct. 4, 1976, 90 Stat. 1708, provided that: “The amendments made by subsection (d) [amending this section] shall apply to payments of winnings made after the 90th day after the date of the enactment of this Act [Oct. 4, 1976].”

#### EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by section 2(b)(2) of Pub. L. 94-164 applicable to taxable years ending after Dec. 31, 1975 and before Jan. 1, 1977, see section 2(g) of Pub. L. 94-164, set out as an Effective Date of 1975 Amendment note under section 32 of this title.

Pub. L. 94-12, title II, § 209(c), Mar. 29, 1975, 89 Stat. 35, as amended by Pub. L. 94-164, § 5(a)(2); Pub. L. 94-331, § 3(a)(2); Pub. L. 94-396, § 2(b); Pub. L. 94-414, § 3(a)(2),

provided that: “The amendments made by sections 202(b) and 205 [amending this section] shall apply to wages paid after April 30, 1975, and before October 1, 1976.”

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92-178, title II, § 208(i), Dec. 10, 1971, 85 Stat. 517, provided that:

“(1) The amendments made by this section [amending this section] (other than subsection (h)) shall apply with respect to wages paid after January 15, 1972.

“(2) The amendments made by subsection (h) [amending this section] shall apply with respect to wages paid after December 31, 1971, and before January 16, 1972.”

#### EFFECTIVE DATE OF 1969 AMENDMENTS

Pub. L. 91-172, title VIII, § 805(h), Dec. 30, 1969, 83 Stat. 709, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendments made by subsections (a), (b), (c), (d), and (e) [amending this section] shall apply with respect to remuneration paid after December 31, 1969.

“(2) The amendment made by subsection (f) [amending this section and section 6051 of this title] applies to wages paid after April 30, 1970.

“(3) Subsection (o) of section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by subsection (g) of this subsection, shall apply to payments made after December 31, 1970. Subsection (p) of such section 3402, added by subsection (g) of this section, shall apply to payments made after June 30, 1970.”

Pub. L. 91-53, § 6(b), Aug. 7, 1969, 83 Stat. 96, provided that: “The amendments made by this section [amending this section] shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970.”

Pub. L. 91-36, § 2(b), June 30, 1969, 83 Stat. 42, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to wages paid after June 30, 1969.”

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-368, title I, § 101(e)(6), Mar. 15, 1966, 80 Stat. 62, provided that: “The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall apply only with respect to remuneration paid after December 31, 1966, but only with respect to withholding exemptions based on estimation years beginning after such date.”

Pub. L. 89-368, title I, § 101(g), Mar. 15, 1966, 80 Stat. 62, provided that: “The amendments made by this section (other than subsection (e) [amending this section]) shall apply only with respect to remuneration paid after April 30, 1966.”

#### EFFECTIVE DATE OF 1965 AMENDMENTS

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

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

#### EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title III, § 302(d), Feb. 26, 1964, 78 Stat. 146, provided that: “The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (c) of this section [amending section 1441 of this title] shall apply with respect to payments made after the seventh day following the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-256 applicable with respect to wages paid after Dec. 31, 1961, see section 110(h)(4) of

Pub. L. 87-256, set out as a note under section 3401 of this title.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 666, § 3, 69 Stat. 605, provided that: “The amendment made by section 2 [amending this section] shall be applicable only with respect to remuneration paid after the date of enactment of this Act [Aug. 9, 1955].”

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

#### WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES

Pub. L. 99-514, title XV, § 1581(a), Oct. 22, 1986, 100 Stat. 2765, provided that: “The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue Code of 1954 [now 1986] to better approximate actual tax liability under the amendments made by this Act [see Tables for classification].”

#### EMPLOYER'S RESPONSIBILITY UPON FAILURE OF EM- PLOYEE TO FILE REVISED WITHHOLDING ALLOWANCE CERTIFICATE BEFORE OCT. 1, 1987

Pub. L. 99-514, title XV, § 1581(c), Oct. 22, 1986, 100 Stat. 2766, as amended by Pub. L. 100-647, title I, § 1015(p), Nov. 10, 1988, 102 Stat. 3572, provided that: “If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages—

“(1) as if the employee claimed 1 withholding allowance, if the employee checked the ‘single’ box on the employee's previous withholding allowance certificate, or

“(2) as if the employee claimed 2 withholding allowances, if the employee checked the ‘married’ box on the employee's previous withholding allowance certificate.

The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee.”

#### FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Pub. L. 95-30, title III, § 304, May 23, 1977, 91 Stat. 152, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94-455].”

#### WAGES PAID DURING 1972 AND AFTER 1972

Pub. L. 91-172, title VIII, § 805(b)(3), (4), Dec. 30, 1969, 83 Stat. 704, which provided for section 3402(b)(1) with-

holding rates of 13.50; 26.90; 29.20; 58.30; 175.00; 350.00; 700.00; and 1.90, effective with respect to wages during 1972, and withholding rates of 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10, effective with respect to wages paid after 1972, was repealed by Pub. L. 92-178, title II, §208(b)(2), Dec. 10, 1971, 85 Stat. 516.

#### TRANSITIONAL DETERMINATION STATUS DATE

Pub. L. 89-368, title I, §101(f), Mar. 15, 1966, 80 Stat. 62, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a withholding exemption certificate furnished the employer after the date of the enactment of this Act [Mar. 15, 1966] and before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished."

#### MEANING OF TERMS

Act Aug. 9, 1955, ch. 666, §1, 69 Stat. 605, provided that: "The terms used in this Act [amending subsecs. (a) and (j) of this section] shall have the same meaning as when used in the Internal Revenue Code."

### § 3403. Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 97-248, title III, §§307(a)(2), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

#### AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by striking out "this chapter" and inserting in lieu thereof "this subchapter". Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

### § 3404. Return and payment by governmental employer

If the employer is the United States, or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 94-455, title XIX, §1903(c), Oct. 4, 1976, 90 Stat. 1810.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out "Territory" after "or a State" and "of such State".

### § 3405. Special rules for pensions, annuities, and certain other deferred income

#### (a) Periodic payments

##### (1) Withholding as if payment were wages

The payor of any periodic payment (as defined in subsection (e)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

##### (2) Election of no withholding

An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual. Such an election shall remain in effect until revoked by such individual.

##### (3) When election takes effect

Any election under this subsection (and any revocation of such an election) shall take effect as provided by subsection (f)(3) of section 3402 for withholding allowance certificates.

##### (4) Amount withheld where no withholding allowance certificate in effect

In the case of any payment with respect to which a withholding allowance certificate is not in effect, the amount withheld under paragraph (1) shall be determined under rules prescribed by the Secretary.

#### (b) Nonperiodic distribution

##### (1) Withholding

The payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution.

##### (2) Election of no withholding

###### (A) In general

An individual may elect not to have paragraph (1) apply with respect to any nonperiodic distribution.

###### (B) Scope of election

An election under subparagraph (A)—

(i) except as provided in clause (ii), shall be on a distribution-by-distribution basis, or

(ii) to the extent provided in regulations, may apply to subsequent nonperiodic distributions made by the payor to the payee under the same arrangement.

#### (c) Eligible rollover distributions

##### (1) In general

In the case of any designated distribution which is an eligible rollover distribution—

(A) subsections (a) and (b) shall not apply, and

(B) the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

##### (2) Exception

Paragraph (1)(B) shall not apply to any distribution if the distributee elects under section 401(a)(31)(A) to have such distribution paid directly to an eligible retirement plan.



**(3) Eligible rollover distribution**

For purposes of this subsection, the term “eligible rollover distribution” has the meaning given such term by section 402(f)(2)(A).

**(d) Liability for withholding****(1) In general**

Except as provided in paragraph (2), the payor of a designated distribution (as defined in subsection (e)(1)) shall withhold, and be liable for, payment of the tax required to be withheld under this section.

**(2) Plan administrator liable in certain cases****(A) In general**

In the case of any plan to which this paragraph applies, paragraph (1) shall not apply and the plan administrator shall withhold, and be liable for, payment of the tax unless the plan administrator—

- (i) directs the payor to withhold such tax, and
- (ii) provides the payor with such information as the Secretary may require by regulations.

**(B) Plans to which paragraph applies**

This paragraph applies to any plan described in, or which at any time has been determined to be described in—

- (i) section 401(a),
- (ii) section 403(a),
- (iii) section 301(d) of the Tax Reduction Act of 1975, or
- (iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

**(e) Definitions and special rules**

For purposes of this section—

**(1) Designated distribution****(A) In general**

Except as provided in subparagraph (B), the term “designated distribution” means any distribution or payment from or under—

- (i) an employer deferred compensation plan,
- (ii) an individual retirement plan (as defined in section 7701(a)(37)), or
- (iii) a commercial annuity.

**(B) Exceptions**

The term “designated distribution” shall not include—

- (i) any amount which is wages without regard to this section,
- (ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and
- (iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on non-resident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or
- (iv) any distribution described in section 404(k)(2).

For purposes of clause (ii), any distribution or payment from or under an individual re-

tirement plan (other than a Roth IRA) shall be treated as includible in gross income.

**(2) Periodic payment**

The term “periodic payment” means a designated distribution which is an annuity or similar periodic payment.

**(3) Nonperiodic distribution**

The term “nonperiodic distribution” means any designated distribution which is not a periodic payment.

**[4) Repealed. Pub. L. 102-318, title V, § 521(b)(38), July 3, 1992, 106 Stat. 312]**

**(5) Employer deferred compensation plan**

The term “employer deferred compensation plan” means any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation.

**(6) Commercial annuity**

The term “commercial annuity” means an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State.

**(7) Plan administrator**

The term “plan administrator” has the meaning given such term by section 414(g).

**(8) Maximum amount withheld**

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of \$200) in lieu of financial shares. For purposes of this paragraph, the term “securities of the employer corporation” has the meaning given such term by section 402(e)(4)(E).

**(9) Separate arrangements to be treated separately**

If the payor has more than 1 arrangement under which designated distributions may be made to any individual, each such arrangement shall be treated separately.

**(10) Time and manner of election****(A) In general**

Any election and any revocation under this section shall be made at such time and in such manner as the Secretary shall prescribe.

**(B) Payor required to notify payee of rights to elect****(i) Periodic payments**

The payor of any periodic payment—

(I) shall transmit to the payee notice of the right to make an election under subsection (a) not earlier than 6 months before the first of such payments and not later than when making the first of such payments,

(II) if such a notice is not transmitted under subclause (I) when making such

first payment, shall transmit such a notice when making such first payment, and

(III) shall transmit to payees, not less frequently than once each calendar year, notice of their rights to make elections under subsection (a) and to revoke such elections.

**(ii) Nonperiodic distributions**

The payor of any nonperiodic distribution shall transmit to the payee notice of the right to make any election provided in subsection (b) at the time of the distribution (or at such earlier time as may be provided in regulations).

**(iii) Notice**

Any notice transmitted pursuant to this subparagraph shall be in such form and contain such information as the Secretary shall prescribe.

**(11) Withholding includes deduction**

The terms “withholding”, “withhold”, and “withheld” include “deducting”, “deduct”, and “deducted”.

**(12) Failure to provide correct TIN**

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(2) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

**(13) Election may not be made with respect to certain payments outside the United States or its possessions**

**(A) In general**

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States and any possession of the United States, no election may be made under subsection (a)(2) or (b)(2) with respect to such payment.

**(B) Exception**

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

(i) a United States citizen or a resident alien of the United States, or

(ii) an individual to whom section 877 applies.

**(f) Withholding to be treated as wage withholding under section 3402 for other purposes**

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(1) any designated distribution (whether or not an election under this section applies to such distribution) shall be treated as if it were wages paid by an employer to an employee with respect to which there has been withholding under section 3402, and

(2) in the case of any designated distribution not subject to withholding under this section

by reason of an election under this section, the amount withheld shall be treated as zero.

(Added Pub. L. 97-248, title III, §334(a), Sept. 3, 1982, 96 Stat. 623; amended Pub. L. 98-369, div. A, title V, §542(c), title VII, §§714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976; Pub. L. 99-514, title XI, §1102(e)(1), title XII, §1234(b)(1), title XVIII, §1875(c)(10), Oct. 22, 1986, 100 Stat. 2416, 2566, 2895; Pub. L. 100-647, title I, §1012(bb)(2)(A)–(C), Nov. 10, 1988, 102 Stat. 3534; Pub. L. 102-318, title V, §§521(b)(36)–(40), 522(b)(1)–(2)(C), July 3, 1992, 106 Stat. 312-314; Pub. L. 104-188, title I, §1704(t)(71), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 106-554, §1(a)(7) [title III, §314(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643; Pub. L. 107-16, title VI, §641(a)(1)(D)(ii), (iii), June 7, 2001, 115 Stat. 119; Pub. L. 115-97, title I, §11041(c)(2)(F), (G), Dec. 22, 2017, 131 Stat. 2084.)

REFERENCES IN TEXT

Section 301(d) of the Tax Reduction Act of 1975, referred to in subsec. (d)(2)(B)(iii), is section 301(d) of Pub. L. 94-12, Mar. 29, 1975, 89 Stat. 26, relating to plan requirements for taxpayers electing additional credits, which was set out as a note under section 46 of this title and was repealed by Pub. L. 95-600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

AMENDMENTS

2017—Subsec. (a)(3). Pub. L. 115-97, §11041(c)(2)(F), substituted “allowance” for “exemption”.

Subsec. (a)(4). Pub. L. 115-97, in heading, substituted “allowance” for “exemption” and in text, substituted “allowance” for “exemption” and “shall be determined under rules prescribed by the Secretary” for “shall be determined by treating the payee as a married individual claiming 3 withholding exemptions”.

2001—Subsec. (c)(3). Pub. L. 107-16, §641(a)(1)(D)(ii), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: “For purposes of this subsection, the term ‘eligible rollover distribution’ has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A)).”

Subsec. (d)(2)(B)(iv). Pub. L. 107-16, §641(a)(1)(D)(iii), added cl. (iv).

2000—Subsec. (e)(1)(B). Pub. L. 106-554 inserted “(other than a Roth IRA)” after “individual retirement plan” in concluding provisions.

1996—Subsec. (e)(12). Pub. L. 104-188 substituted “(b)(2)” for “(b)(3)” in closing provisions.

1992—Subsec. (a). Pub. L. 102-318, §521(b)(36), substituted “Periodic payments” for “Pensions, annuities, etc.” in heading.

Subsec. (a)(1). Pub. L. 102-318, §522(b)(2)(A), substituted “subsection (e)(2)” for “subsection (d)(2)”.

Subsec. (b)(1). Pub. L. 102-318, §§521(b)(37)(A), 522(b)(2)(B), substituted “subsection (e)(3)” for “subsection (d)(3)” and “an amount equal to 10 percent of such distribution” for “the amount determined under paragraph (2)”.

Subsec. (b)(2), (3). Pub. L. 102-318, §521(b)(37)(B), redesignated par. (3) as (2) and struck out former par. (2) which related to amount of withholding.

Subsec. (c). Pub. L. 102-318, §522(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102-318, §522(b)(1), (2)(C), redesignated subsec. (c) as (d) and substituted “subsection (e)(1)” for “subsection (d)(1)” in par. (1). Former subsec. (d) redesignated (e).

Pub. L. 102-318, §521(b)(40), substituted “(b)(2)” for “(b)(3)” in par. (13)(A).

Pub. L. 102-318, §521(b)(39), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of

the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.”

Pub. L. 102-318, §521(b)(38), struck out par. (4) which defined “qualified total distribution” and provided special rule for accumulated deductible employee contributions in determining qualified total distribution.

Subsecs. (e), (f). Pub. L. 102-318, §522(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (d)(13). Pub. L. 100-647, §1012(bb)(2)(C), substituted “United States or its possessions” for “United States” in heading.

Subsec. (d)(13)(A). Pub. L. 100-647, §1012(bb)(2)(A), substituted “the United States and any possession of the United States” for “the United States”.

Subsec. (d)(13)(B)(i). Pub. L. 100-647, §1012(bb)(2)(B), amended cl. (i) generally, substituting “or a resident alien of the United States” for “who is a bona fide resident of a foreign country”.

1986—Subsec. (d)(1)(B). Pub. L. 99-514, §1102(e)(1), inserted last sentence for “For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income.”

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 99-514, §1875(c)(10), reenacted cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3 as cl. (iii) and reenacted cl. (iii) relating to distribution described in section 404(k)(2) as cl. (iv).

Subsec. (d)(13). Pub. L. 99-514, §1234(b)(1), added par. (13).

1984—Subsec. (b)(2)(C). Pub. L. 98-369, §714(j)(1), substituted “nonperiodic distribution” for “distribution described in subparagraph (B)” and “subparagraph (A) or (B) (as the case may be) shall be applied by taking into account” for “the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account”, designated phrase “which is made by reason of a participant’s death” as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98-369, §714(j)(4), added cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98-369, §542(c), added cl. (iii) relating to distributions described in section 404(k)(2). Directory language that section (d)(1)(B) be amended by striking out “and” at end of cl. (i) and substituting “, or” for the period at end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98-369, which struck out “and” at end of cl. (i) and substituted “, and” for the period at end of cl. (ii).

Subsec. (d)(8). Pub. L. 98-369, §714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98-369, §722(h)(4), added par. (12).

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11041(f)(1) of Pub. L. 115-97, set out as a note under section 151 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997,

Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(36)–(40) of Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

Amendment by section 522(b)(1)–(2)(C) of Pub. L. 102-318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102-318, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(bb)(2)(D), Nov. 10, 1988, 102 Stat. 3534, provided that: “The amendments made by this paragraph [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(e)(1) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Pub. L. 99-514, title XII, §1234(b)(2), Oct. 22, 1986, 100 Stat. 2566, provided that: “The amendment made by this subsection [amending this section] shall apply to payments after December 31, 1986.”

Amendment by section 1875(c)(10) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 714(j)(1), (4), (5) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

#### EFFECTIVE DATE

Pub. L. 97-248, title III, §334(e), Sept. 3, 1982, 96 Stat. 627, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) AMENDMENT MADE BY SUBSECTIONS (a) AND (d).—Except as provided in paragraph (4), the amendment made by subsections (a) [enacting this section] and (d) [amending section 3402 of this title] shall apply to payments or other distributions made after December 31, 1982.

“(2) AMENDMENTS MADE BY SUBSECTION (b).—Except as provided in paragraph (4), the amendments made by subsection (b) [amending section 6047 of this title] shall take effect on January 1, 1983.

“(3) AMENDMENTS MADE BY SUBSECTION (c).—The amendments made by subsection (c) [enacting section 6704 of this title] shall take effect on January 1, 1985.

“(4) PERIODIC PAYMENTS BEGINNING BEFORE JANUARY 1, 1983.—For purposes of section 3405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of periodic payments beginning before January 1, 1983, the first periodic payment after December 31, 1982, shall be treated as the first such periodic payment.

“(5) DELAY IN APPLICATION.—The Secretary of the Treasury shall prescribe such regulations which delay (but not beyond June 30, 1983) the application of some or all of the amendments made by this section with respect to any payor until such time as such payor is able to comply without undue hardship with the requirements of such provisions.

“(6) WAIVER OF PENALTY.—No penalty shall be assessed under section 6672 with respect to any failure to withhold as required by the amendments made by this section if such failure was before July 1, 1983, and if the person made a good faith effort to comply with such withholding requirements.”

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 3406. Backup withholding

#### (a) Requirement to deduct and withhold

##### (1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee under-reporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax applicable under section 1(c)<sup>1</sup> and such payment.

##### (2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

#### (b) Reportable payment, etc.

For purposes of this section—

##### (1) Reportable payment

The term “reportable payment” means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

##### (2) Reportable interest or dividend payment

###### (A) In general

The term “reportable interest or dividend payment” means any payment of a kind, and

to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.

#### (B) Special rule for patronage dividends

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term “reportable interest or dividend payment” shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

#### (3) Other reportable payment

The term “other reportable payment” means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers),

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch,

(E) section 6050N (relating to payments of royalties), or

(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).

#### (4) Whether payment is of reportable kind determined without regard to minimum amount

The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

#### (5) Exception for certain small payments

To the extent provided in regulations, the term “reportable payment” shall not include any payment which—

(A) does not exceed \$10, and

(B) if determined for a 1-year period, would not exceed \$10.

#### (6) Other reportable payments include payments described in section 6041(a) or 6041A(a) only where aggregate for calendar year is \$600 or more

Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds \$600,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the

<sup>1</sup> See References in Text note below.

preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

**(7) Exception for certain window payments of interest, etc.**

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term “reportable interest or dividend payment” shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

**(c) Notified payee underreporting with respect to interest and dividends**

**(1) Notified payee underreporting**

If—

(A) the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

**(2) Payee underreporting defined**

For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

**(3) Determination by Secretary to stop (or not to start) withholding**

**(A) In general**

If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue

hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

**(B) Secretary to take action to stop (or not to start) withholding**

For purposes of subparagraph (A), if at the time of the Secretary’s determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

**(C) Time for taking action where notice to payor has been given**

In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(I) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

**(D) Opportunity to request determination**

The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

**(4) Payor notifies payee of withholding because of payee underreporting**

Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

**(5) Payee may be required to notify Secretary who his payors and brokers are**

For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

**(d) Interest and dividend backup withholding applies to new accounts and instruments unless payee certifies that he is not subject to such withholding**

**(1) In general**

There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

**(2) Special rules for readily tradable instruments**

**(A) In general**

Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

**(B) Broker notifies payor**

If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

**(C) Time for payee to provide certification to broker**

In the case of any readily tradable instrument acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

**(3) Exception for existing accounts, etc.**

This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

**(4) Exception for readily tradable instruments acquired through existing brokerage accounts**

Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

**(e) Period for which withholding is in effect**

**(1) Failure to furnish TIN**

In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

**(2) Notification of incorrect number**

In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

**(3) Notified payee underreporting described in subsection (c)**

**(A) In general**

In the case of any notified payee underreporting described in subsection (c), sub-

section (a) shall apply to any reportable interest or dividend payment made—

- (i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such under-reporting, and
- (ii) before the stop date.

**(B) Stop date**

For purposes of this subsection, the term “stop date” means the determination effective date or, if later, the earlier of—

- (i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or
- (ii) the day on which the payor receives from the payee a certification provided by the Secretary under subsection (c)(3)(B).

**(C) Determination effective date**

For purposes of this subsection—

**(i) In general**

Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

**(ii) Determination that there was no under-reporting; hardship**

In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary’s determination is made.

**(4) Failure to provide certification that payee is not subject to withholding**

**(A) In general**

In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

**(B) Special rule for readily tradable instruments acquired through broker where notification**

In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

**(5) 30-day grace periods**

**(A) Start-up**

If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

**(B) Stopping**

Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any

reportable payment made after the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

**(C) Election of shorter grace period**

The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

**(f) Confidentiality of information**

**(1) In general**

No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

**(2) Cross reference**

For provision providing for civil damages for violation of paragraph (1), see section 7431.

**(g) Exceptions**

**(1) Payments to certain payees**

Subsection (a) shall not apply to any payment made to—

- (A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of section 6049(b)(4), or
- (B) any other person specified in regulations.

**(2) Amounts for which withholding otherwise required**

Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

**(3) Exemption while waiting for TIN**

The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

**(h) Other definitions and special rules**

For purposes of this section—

**(1) Obviously incorrect number**

A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

**(2) Payee furnishes 2 incorrect TINs**

If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

**(3) Joint payees**

Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

**(4) Payor defined**

The term “payor” means, with respect to any reportable payment, a person required to

file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

**(5) Broker**

**(A) In general**

The term “broker” has the meaning given to such term by section 6045(c)(1).

**(B) Only 1 broker per acquisition**

If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

**(C) Payor not treated as broker**

In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

**(D) Real estate broker not treated as a broker**

Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).

**(6) Readily tradable instrument**

The term “readily tradable instrument” means—

(A) any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers making a market.

**(7) Original issue discount**

To the extent provided in regulations, rules similar to the rules of paragraph (6) of section 6049(d) shall apply.

**(8) Requirement of notice to payee**

Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

**(9) Requirement of notice to Secretary**

If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

**(10) Coordination with other sections**

For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

**(i) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-67, title I, §104(a), Aug. 5, 1983, 97 Stat. 371; amended Pub. L. 98-369, div. A, title I, §152(a), title VII, §722(h)(1), (2), July 18, 1984, 98 Stat. 691, 975; Pub. L. 99-514, title XV, §§1521(b), 1523(b)(1), title XVIII, §1899A(46), Oct. 22, 1986, 100 Stat. 2746, 2748, 2961; Pub. L. 100-647, title I, §1018(u)(44), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 102-486, title XIX, §1935(a), Oct. 24, 1992, 106 Stat. 3032; Pub. L. 107-16, title I, §101(c)(10), June 7, 2001, 115 Stat. 44; Pub. L. 110-289, div. C, title III, §3091(c), July 30, 2008, 122 Stat. 2911.)

REFERENCES IN TEXT

Section 1(c), referred to in subsec. (a)(1), to be treated, for purposes of the rate of tax, as a reference to the corresponding rate bracket under section 1(j)(2)(C) of this title, see section 1(j)(2)(F) of this title.

AMENDMENTS

2008—Subsec. (b)(3)(F). Pub. L. 110-289 added subpar. (F).

2001—Subsec. (a)(1). Pub. L. 107-16 substituted “equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment” for “equal to 31 percent of such payment” in concluding provisions. 1992—Subsec. (a)(1). Pub. L. 102-486, in closing provisions, substituted “31 percent” for “20 percent”.

1988—Subsec. (h)(5)(D). Pub. L. 100-647 inserted period at end of subpar. (D).

1986—Subsec. (b)(3)(E). Pub. L. 99-514, §1523(b)(1), added subpar. (E).

Subsec. (b)(6). Pub. L. 99-514, §1899A(46), substituted “6041A(a)” for “6041(A)(a)” in heading.

Subsec. (h)(5)(D). Pub. L. 99-514, §1521(b), added subpar. (D).

1984—Subsec. (c)(1). Pub. L. 98-369, §722(h)(2), substituted “(but not the reasons for the withholding under subsection (a)(1)(C))” for “(but not the reasons therefor)”.

Subsec. (d)(2)(A). Pub. L. 98-369, §722(h)(1)(A), inserted “the payor was notified by a broker under subparagraph (B) or” after “if (and only if)” in provisions preceding cl. (i), struck out cl. (i) which read as follows: “the payor was notified by a broker under subparagraph (B),” and redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98-369, §722(h)(1)(B), in amending subpar. (B) generally, reenacted cl. (i), in cl. (ii) inserted “with respect to such acquisition—”, added subcls. (I) and (II), redesignated former subcls. (I) and (II) as (III) and (IV), respectively, and in subcl. (III) substituted “the Secretary notifies such broker” for “such broker is notified by the Secretary”, and in provisions following cl. (ii) substituted “shall within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C) or (D) of subsection (a)(1),” for “within 15 days after the date of the acquisition notify the payor that such payee is subject to withholding under subsection (a)(1)(D) (or subsection (a)(1)(C) in the case of a notification described in clause (ii)(II)).”

Subsec. (e)(1). Pub. L. 98-369, §152(a), inserted provision that the Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-289, div. C, title III, §3091(e), July 30, 2008, 122 Stat. 2911, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050W of this title and amending this section and section 6724 of this title] shall apply to returns for calendar years beginning after December 31, 2010.



## “(2) APPLICATION OF BACKUP WITHHOLDING.—

“(A) IN GENERAL.—The amendment made by subsection (c) [amending this section] shall apply to amounts paid after December 31, 2011.

“(B) ELIGIBILITY FOR TIN MATCHING PROGRAM.—Solely for purposes of carrying out any TIN matching program established by the Secretary under section 3406(i) of the Internal Revenue Code of 1986—

“(i) the amendments made this section shall be treated as taking effect on the date of the enactment of this Act [July 30, 2008], and

“(ii) each person responsible for setting the standards and mechanisms referred to in section 6050W(d)(2)(C) of such Code, as added by this section, for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity.”

## EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

## EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, §1935(b), Oct. 24, 1992, 106 Stat. 3032, provided that: “The amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1992.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1521(b) of Pub. L. 99-514 applicable to real estate transactions closing after Dec. 31, 1986, see section 1521(c) of Pub. L. 99-514, set out as a note under section 6045 of this title.

Amendment by section 1523(b)(1) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99-514, set out as an Effective Date note under section 6050N of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §152(b), July 18, 1984, 98 Stat. 691, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].”

Amendment by section 722(h)(1), (2) of Pub. L. 98-369 applicable as if included in amendments made by Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98-67, see section 722(h)(5)(A) of Pub. L. 98-369, set out as a note under section 643 of this title.

## EFFECTIVE DATE

Section applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

## [§§ 3451 to 3456. Repealed. Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369]

Section 3451, Pub. L. 97-248, title III, §301, Sept. 3, 1982, 96 Stat. 576, set forth withholding requirements respecting income tax collected at source on interest, dividends, and patronage dividends.

Section 3452, Pub. L. 97-248, title III, §301, Sept. 3, 1982, 96 Stat. 577, related to exemptions from withholding requirements.

Section 3453, Pub. L. 97-248, title III, §301, Sept. 3, 1982, 96 Stat. 579; Pub. L. 97-354, §3(i)(1), Oct. 19, 1982, 96 Stat. 1690, defined “payor”.

Section 3454, Pub. L. 97-248, title III, §301, Sept. 3, 1982, 96 Stat. 580; Pub. L. 97-354, §3(i)(2), (3), Oct. 19, 1982, 96 Stat. 1690; Pub. L. 97-424, title V, §547(b)(3), Jan. 6, 1983, 96 Stat. 2200, defined the terms “interest”, “dividend”, and “patronage dividend”.

Section 3455, Pub. L. 97-248, title III, §301, Sept. 3, 1982, 96 Stat. 583, set forth definitions and other special rules.

Section 3456, Pub. L. 97-248, title III, §301, Sept. 3, 1982, 96 Stat. 585, set forth administrative provisions.

## EFFECTIVE DATES; SPECIAL RULES

Pub. L. 97-248, title III, §308, Sept. 3, 1982, 96 Stat. 591, which provided that the amendments made by sections 301 to 308 [enacting subchapter B (§§ 3451-3456) of chapter 24 of this title and amending sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title] would apply to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, provided for the delay in applications for payors unable to comply with the requirements of such provisions without undue hardship, provided a temporary rule for certain withholding exemptions, and provided for delays in making deposits, was repealed by Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.

## REPEAL OF WITHHOLDING ON INTEREST AND DIVIDENDS

Pub. L. 98-67, title I, §102(a)-(d), Aug. 5, 1983, 97 Stat. 369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) IN GENERAL.—Subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) [subtitle A (§§ 301-308) of title III of Pub. L. 97-248, which enacted this section and sections 3452 to 3456 of this title, amended sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title and enacted provisions set out as a note above] is hereby repealed as of the close of June 30, 1983.

“(b) CONFORMING AMENDMENT.—Except as provided in this section, the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

“(c) REPEAL NOT TO APPLY TO AMOUNTS DEDUCTED AND WITHHELD BEFORE SEPTEMBER 2, 1983.—

“(1) IN GENERAL.—If, notwithstanding the repeal made by subsection (a) (and the provisions of subsection (b)), an amount is deducted and withheld before September 2, 1983, under subchapter B of chapter 24 of the Internal Revenue Code of 1986 (as in effect before its repeal by subsection (a)), the repeal made by subsection (a) (and the provisions of subsection (b)) shall not apply to the amount so deducted and withheld.

“(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—Paragraph (1) shall not apply with respect to any payor who elects (at the time and in the manner prescribed by the Secretary of the Treasury or his delegate) to have paragraph (1) not apply.

“(d) ESTIMATED TAX PAYMENTS.—For purposes of determining the amount of any addition to tax under section 6654 of the Internal Revenue Code of 1986 with respect to any installment required to be paid before July

1, 1983, the amount of the credit allowed by section 31 of such Code for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, shall be increased by an amount equal to 10 percent of the aggregate amount of payments—

“(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

“(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B).”

## CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.	
3501.	Collection and payment of taxes.
3502.	Nondeductibility of taxes in computing taxable income.
3503.	Erroneous payments.
3504.	Acts to be performed by agents.
3505.	Liability of third parties paying or providing for wages.
3506.	Individuals providing companion sitting placement services.
[3507.]	Repealed.]
3508.	Treatment of real estate agents and direct sellers.
3509.	Determination of employer's liability for certain employment taxes.
3510.	Coordination of collection of domestic service employment taxes with collection of income taxes.
3511.	Certified professional employer organizations.
3512.	Treatment of certain persons as employers with respect to motion picture projects.

### AMENDMENTS

2015—Pub. L. 114–113, div. Q, title III, §346(b), Dec. 18, 2015, 129 Stat. 3116, added item 3512.

2014—Pub. L. 113–295, div. B, title II, §206(d)(1), Dec. 19, 2014, 128 Stat. 4071, added item 3511.

2010—Pub. L. 111–226, title II, §219(b)(3), Aug. 10, 2010, 124 Stat. 2403, struck out item 3507 “Advance payment of earned income credit”.

1994—Pub. L. 103–387, §2(b)(2), Oct. 22, 1994, 108 Stat. 4074, added item 3510.

1990—Pub. L. 101–508, title XI, §11801(b)(16), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 3510 “Credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984”.

1983—Pub. L. 98–67 repealed amendments made by section 307 of Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 98–21, title I, §123(b)(2), Apr. 20, 1983, 97 Stat. 88, added item 3510.

1982—Pub. L. 97–248, title II, §§269(d), 270(b), Sept. 3, 1982, 96 Stat. 553, 554, added items 3508 and 3509.

Pub. L. 97–248, title III, §§307(b)(5), 308(a), Sept. 3, 1982, 96 Stat. 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 25 is amended by inserting “AND COLLECTION OF INCOME TAXES AT SOURCE”. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1978—Pub. L. 95–600, title I, §105(b)(2), Nov. 6, 1978, 92 Stat. 2776, added item 3507.

1977—Pub. L. 95–171, §10(b), Nov. 12, 1977, 91 Stat. 1356, added item 3506.

1966—Pub. L. 89–719, title I, §105(c), Nov. 2, 1966, 80 Stat. 1139, added item 3505.

## § 3501. Collection and payment of taxes

### (a) General rule

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

### (b) Taxes with respect to non-cash fringe benefits

The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be collected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title V, §531(d)(5), July 18, 1984, 98 Stat. 885.)

### AMENDMENTS

1984—Pub. L. 98–369 designated existing provisions as subsec. (a), added heading, and added subsec. (b).

1976—Pub. L. 94–455 struck out “or his delegate” after “Secretary”.

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

## § 3502. Nondeductibility of taxes in computing taxable income

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 97–248, title III, §§305(b), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

### AMENDMENTS

1983—Subsecs. (b), (c). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsecs. (b), (c). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (b) is amended and a new subsec. (c) is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

## § 3503. Erroneous payments

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 471.)

#### **§ 3504. Acts to be performed by agents**

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary may specify. Except as may be otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 85-866, title I, §71, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### **AMENDMENTS**

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in three places.

1958—Pub. L. 85-866 substituted “title” for “subtitle” in first sentence.

#### **EFFECTIVE DATE OF 1958 AMENDMENT**

Pub. L. 85-866, title I, §71, Sept. 2, 1958, 72 Stat. 1660, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1954.

#### **§ 3505. Liability of third parties paying or providing for wages**

##### **(a) Direct payment by third parties**

For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

##### **(b) Personal liability where funds are supplied**

If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the

liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

##### **(c) Effect of payment**

Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

(Added Pub. L. 89-719, title I, §105(a), Nov. 2, 1966, 80 Stat. 1138.)

#### **EFFECTIVE DATE**

Section applicable only with respect to wages paid on or after Jan. 1, 1967, see section 114(c)(1) of Pub. L. 89-719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

#### **§ 3506. Individuals providing companion sitting placement services**

##### **(a) In general**

For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

##### **(b) Definition**

For purposes of this section, the term “sitters” means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

##### **(c) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(Added Pub. L. 95-171, §10(a), Nov. 12, 1977, 91 Stat. 1356.)

#### **EFFECTIVE DATE**

Pub. L. 95-171, §10(c), Nov. 12, 1977, 91 Stat. 1356, provided that: “The amendments made by this section [enacting this section] shall apply to remuneration received after December 31, 1974.”

#### **UNEMPLOYMENT COMPENSATION OR SOCIAL SECURITY BENEFITS BASED ON SERVICES PERFORMED BEFORE NOVEMBER 12, 1977, UNAFFECTED**

Pub. L. 95-171, §10(d), Nov. 12, 1977, 91 Stat. 1356, provided that: “The amendments made by this section [enacting this section] shall not be construed as affecting (1) any individual’s right to receive unemployment compensation based on services performed before the date of the enactment of this Act [Nov. 12, 1977], or (2) any individual’s eligibility for social security benefits to the extent based on services performed before that date.”

#### **[§ 3507. Repealed. Pub. L. 111-226, title II, § 219(a)(1), Aug. 10, 2010, 124 Stat. 2403]**

Section, added Pub. L. 95-600, title I, §105(b)(1), Nov. 6, 1978, 92 Stat. 2773; amended Pub. L. 97-248, title III, §§307(a)(3), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title IV, §474(r)(30), title X, §1042(d)(3), (4), July 18, 1984, 98 Stat. 845, 1044; Pub. L. 99-514, title I, §111(d)(2), (3), Oct. 22, 1986, 100 Stat. 2108; Pub. L.

101-508, title XI, §1111(c), Nov. 5, 1990, 104 Stat. 1388-412; Pub. L. 103-66, title XIII, §13131(d)(4)-(6), Aug. 10, 1993, 107 Stat. 435; Pub. L. 103-465, title VII, §721(c), Dec. 8, 1994, 108 Stat. 5002, related to advance payment of earned income credit.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111-226, set out as an Effective Date of 2010 Amendment note under section 32 of this title.

### § 3508. Treatment of real estate agents and direct sellers

#### (a) General rule

For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

- (1) the individual performing such services shall not be treated as an employee, and
- (2) the person for whom such services are performed shall not be treated as an employer.

#### (b) Definitions

For purposes of this section—

##### (1) Qualified real estate agent

The term “qualified real estate agent” means any individual who is a sales person if—

- (A) such individual is a licensed real estate agent,
- (B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and
- (C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

##### (2) Direct seller

The term “direct seller” means any person if—

- (A) such person—
  - (i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,
  - (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or
  - (iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),
- (B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or

other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

### (3) Coordination with retirement plans for self-employed

This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(Added Pub. L. 97-248, title II, §269(a), Sept. 3, 1982, 96 Stat. 551; amended Pub. L. 104-188, title I, §1118(a), Aug. 20, 1996, 110 Stat. 1764.)

#### AMENDMENTS

1996—Subsec. (b)(2)(A). Pub. L. 104-188 added cl. (iii).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title XI, §1118(b), Aug. 20, 1996, 110 Stat. 1764, provided that: “The amendments made by this section shall apply to services performed after December 31, 1995.”

#### EFFECTIVE DATE

Pub. L. 97-248, title II, §269(e), Sept. 3, 1982, 96 Stat. 553, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1982.

“(2) SUBSECTION (c).—The amendments made by subsection (c) [amending provisions set out as a note under section 3401 of this title] shall take effect on July 1, 1982.”

#### RULES AND REGULATIONS

Pub. L. 97-248, title II, §269(c)(3), Sept. 3, 1982, 96 Stat. 553, provided that: “Nothing in section 530 of the Revenue Act of 1978 [set out as a note under section 3401 of this title] shall be construed to prohibit the implementation of the amendments made by this section [enacting this section, amending section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 3401 of this title].”

### § 3509. Determination of employer's liability for certain employment taxes

#### (a) In general

If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

##### (1) Withholding taxes

Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

##### (2) Employee social security tax

Taxes under subchapter A of chapter 21 with respect to such employee shall be determined

as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

**(b) Employer's liability increased where employer disregards reporting requirements**

**(1) In general**

In the case of an employer who fails to meet the applicable requirements of section 6041(a), 6041A, or 6051 with respect to any employee, unless such failure is due to reasonable cause and not willful neglect, subsection (a) shall be applied with respect to such employee—

(A) by substituting “3 percent” for “1.5 percent” in paragraph (1); and

(B) by substituting “40 percent” for “20 percent” in paragraph (2).

**(2) Applicable requirements**

For purposes of paragraph (1), the term “applicable requirements” means the requirements described in paragraph (1) which would be applicable consistent with the employer's treatment of the employee as not being an employee for purposes of chapter 24 or subchapter A of chapter 21.

**(c) Section not to apply in cases of intentional disregard**

This section shall not apply to the determination of the employer's liability for tax under chapter 24 or subchapter A of chapter 21 if such liability is due to the employer's intentional disregard of the requirement to deduct and withhold such tax.

**(d) Special rules**

For purposes of this section—

**(1) Determination of liability**

If the amount of any liability for tax is determined under this section—

(A) the employee's liability for tax shall not be affected by the assessment or collection of the tax so determined,

(B) the employer shall not be entitled to recover from the employee any tax so determined, and

(C) sections<sup>1</sup> 3402(d) and section 6521 shall not apply.

**(2) Section not to apply where employer deducts wage but not social security taxes**

This section shall not apply to any employer with respect to any wages if—

(A) the employer deducted and withheld any amount of the tax imposed by chapter 24 on such wages, but

(B) failed to deduct and withhold the amount of the tax imposed by subchapter A of chapter 21 with respect to such wages.

**(3) Section not to apply to certain statutory employees**

This section shall not apply to any tax under subchapter A of chapter 21 with respect to an individual described in subsection (d)(3) of section 3121 (without regard to whether such individual is described in paragraph (1) or (2) of such subsection).

(Added Pub. L. 97-248, title II, §270(a), Sept. 3, 1982, 96 Stat. 553; amended Pub. L. 100-647, title II, §2003(d), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 101-508, title V, §5130(a)(4), Nov. 5, 1990, 104 Stat. 1388-289.)

AMENDMENTS

1990—Subsec. (d)(3). Pub. L. 101-508 substituted “subsection (d)(3)” for “subsection (d)(4)”.

1988—Subsec. (d)(3). Pub. L. 100-647 substituted “subsection (d)(4)” for “subsection (d)(3)”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the enactment of Pub. L. 100-647, §2003(d), see section 5130(b) of Pub. L. 101-508, set out as a note under section 1402 of this title.

EFFECTIVE DATE

Pub. L. 97-248, title II, §270(c), Sept. 3, 1982, 96 Stat. 554, provided that: “The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982], except that such amendments shall not apply to any assessment made before January 1, 1983.”

**§3510. Coordination of collection of domestic service employment taxes with collection of income taxes**

**(a) General rule**

Except as otherwise provided in this section—

(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer's taxable year which begins in such calendar year, and

(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

**(b) Domestic service employment taxes subject to estimated tax provisions**

**(1) In general**

Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

**(2) Employers not otherwise required to make estimated payments**

Paragraph (1) shall not apply to any employer for any calendar year if—

(A) no credit for wage withholding is allowed under section 31 to such employer for the taxable year of the employer which begins in such calendar year, and

(B) no addition to tax would (but for this section) be imposed under section 6654 for such taxable year by reason of section 6654(e).

**(3) Annualization**

Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

**(c) Domestic service employment taxes**

For purposes of this section, the term “domestic service employment taxes” means—

<sup>1</sup> So in original. Probably should be “section”.

(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term “domestic service in a private home of the employer” includes domestic service described in section 3121(g)(5).

**(d) Exception where employer liable for other employment taxes**

To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

**(e) General regulatory authority**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such employment taxes with the assessment and collection of domestic employers’ income taxes.

**(f) Authority to enter into agreements to collect State unemployment taxes**

**(1) In general**

The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State’s unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

**(2) Transfers to State account**

Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

**(3) Subtitle F made applicable**

For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

**(4) State**

For purposes of this subsection, the term “State” has the meaning given such term by section 3306(j)(1).

(Added Pub. L. 103-387, §2(b)(1), Oct. 22, 1994, 108 Stat. 4073; amended Pub. L. 113-295, div. A, title II, § 221(a)(102), Dec. 19, 2014, 128 Stat. 4052.)

**PRIOR PROVISIONS**

A prior section 3510, added Pub. L. 98-21, title I, §123(b)(1), Apr. 20, 1983, 97 Stat. 88, provided a credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984, prior to repeal by Pub. L. 101-508, title XI, §11801(a)(42), Nov. 5, 1990, 104 Stat. 1388-521.

**AMENDMENTS**

2014—Subsec. (b)(4). Pub. L. 113-295 struck out par. (4). Text read as follows: “In the case of any taxable year

beginning before January 1, 1998, no addition to tax shall be made under section 6654 with respect to any underpayment to the extent such underpayment was created or increased by this section.”

**EFFECTIVE DATE OF 2014 AMENDMENT**

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

**EFFECTIVE DATE**

Pub. L. 103-387, §2(b)(3), Oct. 22, 1994, 108 Stat. 4074, provided that: “The amendments made by this subsection [enacting this section] shall apply to remuneration paid in calendar years beginning after December 31, 1994.”

**EXPANDED INFORMATION TO EMPLOYERS**

Pub. L. 103-387, §2(b)(4), Oct. 22, 1994, 108 Stat. 4074, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall prepare and make available information on the Federal tax obligations of employers with respect to employees performing domestic service in a private home of the employer. Such information shall also include a statement that such employers may have obligations with respect to such employees under State laws relating to unemployment insurance and workers compensation.”

**§3511. Certified professional employer organizations**

**(a) General rules**

For purposes of the taxes, and other obligations, imposed by this subtitle—

(1) a certified professional employer organization shall be treated as the employer (and no other person shall be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee, and

(2) the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

**(b) Successor employer status**

For purposes of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1)—

(1) a certified professional employer organization entering into a service contract with a customer with respect to a work site employee shall be treated as a successor employer and the customer shall be treated as a predecessor employer during the term of such service contract, and

(2) a customer whose service contract with a certified professional employer organization is terminated with respect to a work site employee shall be treated as a successor employer and the certified professional employer organization shall be treated as a predecessor employer.

**(c) Liability of certified professional employer organization**

Solely for purposes of its liability for the taxes and other obligations imposed by this subtitle—

(1) a certified professional employer organization shall be treated as the employer of any

individual (other than a work site employee or a person described in subsection (f)) who is performing services covered by a contract meeting the requirements of section 7705(e)(2), but only with respect to remuneration remitted by such organization to such individual, and

(2) the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

**(d) Treatment of credits**

**(1) In general**

For purposes of any credit specified in paragraph (2)—

(A) such credit with respect to a work site employee performing services for the customer applies to the customer, not the certified professional employer organization,

(B) the customer, and not the certified professional employer organization, shall take into account wages and employment taxes—

(i) paid by the certified professional employer organization with respect to the work site employee, and

(ii) for which the certified professional employer organization receives payment from the customer, and

(C) the certified professional employer organization shall furnish the customer and the Secretary with any information necessary for the customer to claim such credit.

**(2) Credits specified**

A credit is specified in this paragraph if such credit is allowed under—

(A) section 41 (credit for increasing research activity),

(B) section 45A (Indian employment credit),

(C) section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips),

(D) section 45C (clinical testing expenses for certain drugs for rare diseases or conditions),

(E) section 45R (employee health insurance expenses of small employers),

(F) section 51 (work opportunity credit),

(G) section 1396 (empowerment zone employment credit), and

(H) any other section as provided by the Secretary.

**(e) Special rule for related party**

This section shall not apply in the case of a customer which bears a relationship to a certified professional employer organization described in section 267(b) or 707(b). For purposes of the preceding sentence, such sections shall be applied by substituting “10 percent” for “50 percent”.

**(f) Special rule for certain individuals**

For purposes of the taxes imposed under this subtitle, an individual with net earnings from self-employment derived from the customer's trade or business (including a partner in a partnership that is a customer) is not a work site

employee with respect to remuneration paid by a certified professional employer organization.

**(g) Reporting requirements and obligations**

The Secretary shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with this title by certified professional employer organizations or persons that have been so certified. Such rules shall include—

(1) notification of the Secretary in such manner as the Secretary shall prescribe in the case of the commencement or termination of a service contract described in section 7705(e)(2) between such a person and a customer, and the employer identification number of such customer,

(2) such information as the Secretary determines necessary for the customer to claim the credits identified in subsection (d) and the manner in which such information is to be provided, as prescribed by the Secretary, and

(3) such other information as the Secretary determines is essential to promote compliance with respect to the credits identified in subsection (d) and section 3302, and

shall be designed in a manner which streamlines, to the extent possible, the application of requirements of this section and section 7705, the exchange of information between a certified professional employer organization and its customers, and the reporting and recordkeeping obligations of the certified professional employer organization.

**(h) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 113-295, div. B, title II, §206(a), Dec. 19, 2014, 128 Stat. 4065.)

**EFFECTIVE DATE**

Section applicable with respect to wages for services performed on or after January 1 of the first calendar year beginning more than 12 months after Dec. 19, 2014, see section 206(g)(1) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 3302 of this title.

**§ 3512. Treatment of certain persons as employers with respect to motion picture projects**

**(a) In general**

For purposes of sections 3121(a)(1) and 3306(b)(1), remuneration paid to a motion picture project worker by a motion picture project employer during a calendar year shall be treated as remuneration paid with respect to employment of such worker by such employer during the calendar year. The identity of such employer for such purposes shall be determined as set forth in this section and without regard to the usual common law rules applicable in determining the employer-employee relationship.

**(b) Definitions**

For purposes of this section—

**(1) Motion picture project employer**

The term “motion picture project employer” means any person if—

(A) such person (directly or through affiliates)—

(i) is a party to a written contract covering the services of motion picture project workers with respect to motion picture projects in the course of a client's trade or business,

(ii) is contractually obligated to pay remuneration to the motion picture project workers without regard to payment or reimbursement by any other person,

(iii) controls the payment (within the meaning of section 3401(d)(1)) of remuneration to the motion picture project workers and pays such remuneration from its own account or accounts,

(iv) is a signatory to one or more collective bargaining agreements with a labor organization (as defined in 29 U.S.C. 152(5)) that represents motion picture project workers, and

(v) has treated substantially all motion picture project workers that such person pays as employees and not as independent contractors during such calendar year for purposes of determining employment taxes under this subtitle, and

(B) at least 80 percent of all remuneration (to which section 3121 applies) paid by such person in such calendar year is paid to motion picture project workers.

#### (2) Motion picture project worker

The term “motion picture project worker” means any individual who provides services on motion picture projects for clients who are not affiliated with the motion picture project employer.

#### (3) Motion picture project

The term “motion picture project” means the production of any property described in section 168(f)(3). Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

#### (4) Affiliate; affiliated

A person shall be treated as an affiliate of, or affiliated with, another person if such persons are treated as a single employer under subsection (b) or (c) of section 414.

(Added Pub. L. 114–113, div. Q, title III, § 346(a), Dec. 18, 2015, 129 Stat. 3115.)

#### REFERENCES IN TEXT

29 U.S.C. 152, referred to in subsec. (b)(1)(A)(iv), is section 2 of the National Labor Relations Act, act July 5, 1935, ch. 372, 49 Stat. 450, which is classified to section 152 of Title 29, Labor.

#### EFFECTIVE DATE

Pub. L. 114–113, div. Q, title III, § 346(c), Dec. 18, 2015, 129 Stat. 3116, provided that: “The amendments made by this section [enacting this section] shall apply to remuneration paid after December 31, 2015.”

#### CONSTRUCTION

Pub. L. 114–113, div. Q, title III, § 346(d), Dec. 18, 2015, 129 Stat. 3116, provided that: “Nothing in the amendments made by this section [enacting this section] shall be construed to create any inference on the law

before the date of the enactment of this Act [Dec. 18, 2015].”

### Subtitle D—Miscellaneous Excise Taxes

Chapter	Sec. <sup>1</sup>
31. Retail excise taxes .....	4001
32. Manufacturers excise taxes .....	4061
33. Facilities and services .....	4231
34. Taxes on certain insurance policies .....	4371
35. Taxes on wagering .....	4401
36. Certain other excise taxes .....	4451
[37. Repealed.]	
38. Environmental taxes .....	4611
39. Registration-required obligations .....	4701
40. General provisions relating to occupational taxes .....	4901
41. Public charities .....	4911
42. Private foundations; and certain other tax-exempt organizations .....	4940
43. Qualified pension, etc., plans .....	4971
44. Real estate investment trusts .....	4981
45. Provisions relating to expatriated entities .....	4985
46. Golden parachute payments .....	4999
47. Certain group health plans .....	5000
48. Maintenance of minimum essential coverage .....	5000A
49. Cosmetic services .....	5000B
50. Foreign procurement .....	5000C

#### AMENDMENTS

2011—Pub. L. 111–347, title III, § 301(a)(2), Jan. 2, 2011, 124 Stat. 3666, added item for chapter 50.

2010—Pub. L. 111–148, title X, § 10907(c), Mar. 23, 2010, 124 Stat. 1020, added item for chapter 49.

Pub. L. 111–148, title IX, § 9017(b), Mar. 23, 2010, 124 Stat. 872, which directed amendment of analysis by adding item for chapter 49, was not executed in view of Pub. L. 111–148, title X, § 10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

Pub. L. 111–148, title I, § 1501(c), title VI, § 6301(e)(2)(B)(ii), Mar. 23, 2010, 124 Stat. 249, 747, added items for chapters 34 and 48 and struck out former item for chapter 34 “Documentary stamp taxes”.

2004—Pub. L. 108–357, title VIII, § 802(c)(2), Oct. 22, 2004, 118 Stat. 1568, added item for chapter 45.

1990—Pub. L. 101–508, title XI, § 11801(b)(17), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for chapter 37 “Sugar, coconut and palm oil”.

1989—Pub. L. 101–239, title VI, § 6202(b)(4)(B), title VII, § 7841(d)(4), Dec. 19, 1989, 103 Stat. 2233, 2428, substituted semicolon for comma in item for chapter 42 and struck out “large” after “Certain” in item for chapter 47.

1988—Pub. L. 100–418, title I, § 1941(b)(3)(A), Aug. 23, 1988, 102 Stat. 1324, struck out item for chapter 45 “Windfall profit tax on domestic crude oil”.

1987—Pub. L. 100–203, title X, § 10712(c)(8), Dec. 22, 1987, 101 Stat. 1330–467, substituted “and certain other tax-exempt organizations” for “black lung benefit trusts” in item for chapter 42.

1986—Pub. L. 99–509, title IX, § 9319(d)(2), Oct. 21, 1986, 100 Stat. 2012, added item for chapter 47.

1984—Pub. L. 98–369, div. A, title I, § 67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.

1983—Pub. L. 97–424, title V, § 512(b)(2)(B), Jan. 6, 1983, 96 Stat. 2177, substituted “Retail excise taxes” for “Special fuels” in item for chapter 31.

1982—Pub. L. 97–248, title III, § 310(b)(4)(B), Sept. 3, 1982, 96 Stat. 598, added item for chapter 39.

1980—Pub. L. 96–510, title II, § 211(b), Dec. 11, 1980, 94 Stat. 2801, added item for chapter 38.

Pub. L. 96–223, § 101(a)(2), Apr. 2, 1980, 94 Stat. 250, added item for chapter 45.

<sup>1</sup> Section numbers editorially supplied.



1978—Pub. L. 95-227, §4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, inserted “, black lung benefit trusts” after “foundations” in item for chapter 42.

1976—Pub. L. 94-455, title XIII, §1307(d)(3)(A), title XVI, §1605(c), title XIX, §§1904(b)(7)(E), (10)(G), 1952(n)(6), Oct. 4, 1976, 90 Stat. 1728, 1755, 1815, 1818, 1846, substituted “41. Public charities” for “41. Interest equalization tax” added item for chapter 44 and struck out items for chapters “38. Import taxes” and “39. Regulatory taxes”.

1974—Pub. L. 93-406, title II, §1016(b)(2), Sept. 2, 1974, 88 Stat. 932, added item for chapter 43.

1969—Pub. L. 91-172, title I, §101(j)(59), Dec. 30, 1969, 83 Stat. 532, added item for chapter 42.

1964—Pub. L. 88-563, §2(b), Sept. 2, 1964, 78 Stat. 841, added item for chapter 41.

#### IMPOSITION OF ANNUAL FEE ON BRANDED PRESCRIPTION PHARMACEUTICAL MANUFACTURERS AND IMPORTERS

Pub. L. 111-148, title IX, §9008, Mar. 23, 2010, 124 Stat. 859, as amended by Pub. L. 111-152, title I, §1404(a), Mar. 30, 2010, 124 Stat. 1064, provided that:

##### “(a) IMPOSITION OF FEE.—

“(1) IN GENERAL.—Each covered entity engaged in the business of manufacturing or importing branded prescription drugs shall pay to the Secretary of the Treasury not later than the annual payment date of each calendar year beginning after 2010 a fee in an amount determined under subsection (b).

“(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term ‘annual payment date’ means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

##### “(b) DETERMINATION OF FEE AMOUNT.—

“(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

“(A) the covered entity’s branded prescription drug sales taken into account during the preceding calendar year, bear to

“(B) the aggregate branded prescription drug sales of all covered entities taken into account during such preceding calendar year.

“(2) SALES TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the branded prescription drug sales taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

“With respect to a covered entity’s aggregate branded prescription drug sales during the calendar year that are:	The percentage of such sales taken into account is:
Not more than \$5,000,000 .....	0 percent
More than \$5,000,000 but not more than \$125,000,000.	10 percent
More than \$125,000,000 but not more than \$225,000,000.	40 percent
More than \$225,000,000 but not more than \$400,000,000.	75 percent
More than \$400,000,000 .....	100 percent.

“(3) SECRETARIAL DETERMINATION.—The Secretary of the Treasury shall calculate the amount of each covered entity’s fee for any calendar year under paragraph (1). In calculating such amount, the Secretary of the Treasury shall determine such covered entity’s branded prescription drug sales on the basis of reports submitted under subsection (g) and through the use of any other source of information available to the Secretary of the Treasury.

“(4) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined in accordance with the following table:

“Calendar year	Applicable amount
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2011 .....	\$2,500,000,000
2012 .....	\$2,800,000,000
2013 .....	\$2,800,000,000
2014 .....	\$3,000,000,000
2015 .....	\$3,000,000,000
2016 .....	\$3,000,000,000
2017 .....	\$4,000,000,000
2018 .....	\$4,100,000,000
2019 and thereafter .....	\$2,800,000,000.

“(c) TRANSFER OF FEES TO MEDICARE PART B TRUST FUND.—There is hereby appropriated to the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act [42 U.S.C. 1395t] an amount equal to the fees received by the Secretary of the Treasury under subsection (a).

##### “(d) COVERED ENTITY.—

“(1) IN GENERAL.—For purposes of this section, the term ‘covered entity’ means any manufacturer or importer with gross receipts from branded prescription drug sales.

##### “(2) CONTROLLED GROUPS.—

“(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity.

“(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

“(3) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (2), all such persons shall be jointly and severally liable for payment of such fee.

##### “(e) BRANDED PRESCRIPTION DRUG SALES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘branded prescription drug sales’ means sales of branded prescription drugs to any specified government program or pursuant to coverage under any such program.

##### “(2) BRANDED PRESCRIPTION DRUGS.—

“(A) IN GENERAL.—The term ‘branded prescription drug’ means—

“(i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or

“(ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

“(B) PRESCRIPTION DRUG.—For purposes of subparagraph (A)(i), the term ‘prescription drug’ means any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

“(3) EXCLUSION OF ORPHAN DRUG SALES.—The term ‘branded prescription drug sales’ shall not include sales of any drug or biological product with respect to which a credit was allowed for any taxable year under section 45C of the Internal Revenue Code of 1986. The preceding sentence shall not apply with respect to any such drug or biological product after the date on which such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the treatment of the rare disease or condition with respect to which such credit was allowed.

##### “(4) SPECIFIED GOVERNMENT PROGRAM.—The term ‘specified government program’ means—

“(A) the Medicare Part D program under part D of title XVIII of the Social Security Act [42 U.S.C. 1395w-101 et seq.],

“(B) the Medicare Part B program under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.],

“(C) the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.],

“(D) any program under which branded prescription drugs are procured by the Department of Veterans Affairs,

“(E) any program under which branded prescription drugs are procured by the Department of Defense, or

“(F) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

“(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

“(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

“(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

“(g) REPORTING REQUIREMENT.—Not later than the date determined by the Secretary of the Treasury following the end of any calendar year, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Secretary of Defense shall report to the Secretary of the Treasury, in such manner as the Secretary of the Treasury prescribes, the total branded prescription drug sales for each covered entity with respect to each specified government program under such Secretary’s jurisdiction using the following methodology:

“(1) MEDICARE PART D PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part D program, the product of—

“(A) the per-unit ingredient cost, as reported to the Secretary of Health and Human Services by prescription drug plans and Medicare Advantage prescription drug plans, minus any per-unit rebate, discount, or other price concession provided by the covered entity, as reported to the Secretary of Health and Human Services by the prescription drug plans and Medicare Advantage prescription drug plans, and

“(B) the number of units of the branded prescription drug paid for under the Medicare Part D program.

“(2) MEDICARE PART B PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part B program under section 1862(a) of the Social Security Act [42 U.S.C. 1395y(a)], the product of—

“(A) the per-unit average sales price (as defined in section 1847A(c) of the Social Security Act [42 U.S.C. 1395w-3a(c)]) or the per-unit Part B payment rate for a separately paid branded prescription drug without a reported average sales price, and

“(B) the number of units of the branded prescription drug paid for under the Medicare Part B program.

The Centers for Medicare and Medicaid Services shall establish a process for determining the units and the allocated price for purposes of this section for those branded prescription drugs that are not separately payable or for which National Drug Codes are not reported.

“(3) MEDICAID PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered under the Medicaid program, the product of—

“(A) the per-unit ingredient cost paid to pharmacies by States for the branded prescription drug dispensed to Medicaid beneficiaries, minus any per-unit rebate paid by the covered entity under section 1927 of the Social Security Act [42 U.S.C. 1396r-8] and any State supplemental rebate, and

“(B) the number of units of the branded prescription drug paid for under the Medicaid program.

“(4) DEPARTMENT OF VETERANS AFFAIRS PROGRAMS.—The Secretary of Veterans Affairs shall report, for each covered entity and for each branded prescription drug of the covered entity the total amount paid for each such branded prescription drug procured by the Department of Veterans Affairs for its beneficiaries.

“(5) DEPARTMENT OF DEFENSE PROGRAMS AND TRICARE.—The Secretary of Defense shall report, for each covered entity and for each branded prescription drug of the covered entity, the sum of—

“(A) the total amount paid for each such branded prescription drug procured by the Department of Defense for its beneficiaries, and

“(B) for each such branded prescription drug dispensed under the TRICARE retail pharmacy program, the product of—

“(i) the per-unit ingredient cost, minus any per-unit rebate paid by the covered entity, and

“(ii) the number of units of the branded prescription drug dispensed under such program.

“(h) SECRETARY.—For purposes of this section, the term ‘Secretary’ includes the Secretary’s delegate.

“(i) GUIDANCE.—The Secretary of the Treasury shall publish guidance necessary to carry out the purposes of this section.

“(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2010.

“(k) CONFORMING AMENDMENT.—[Amended section 1395t of Title 42, The Public Health and Welfare.]”

[Pub. L. 111-152, title I, §1404(b), Mar. 30, 2010, 124 Stat. 1064, provided that: “The amendments made by this section [amending section 9008 of Pub. L. 111-148, set out above] shall take effect as if included in section 9008 of the Patient Protection and Affordable Care Act [Pub. L. 111-148].”]

#### IMPOSITION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS

Pub. L. 111-148, title IX, §9009, Mar. 23, 2010, 124 Stat. 862, as amended by Pub. L. 111-148, title X, §10904(a), Mar. 23, 2010, 124 Stat. 1016, provided for the imposition of an annual fee on medical device manufacturers and importers in calendar years beginning after 2010, prior to repeal by Pub. L. 111-152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065. See section 4191 of this title.

[Pub. L. 111-152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065, provided that the repeal of section 9009 of Pub. L. 111-148, formerly set out above, is effective as of Mar. 23, 2010.]

#### IMPOSITION OF ANNUAL FEE ON HEALTH INSURANCE PROVIDERS

Pub. L. 111-148, title IX, §9010, title X, §10905(a)–(f), Mar. 23, 2010, 124 Stat. 865, 1017–1019, as amended by Pub. L. 111-152, title I, §1406(a), Mar. 30, 2010, 124 Stat. 1065; Pub. L. 114-113, div. P, title II, §201, Dec. 18, 2015, 129 Stat. 3037, provided that:

“(a) IMPOSITION OF FEE.—

“(1) IN GENERAL.—Each covered entity engaged in the business of providing health insurance shall pay to the Secretary not later than the annual payment date of each calendar year beginning after 2013 a fee in an amount determined under subsection (b).

“(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term ‘annual payment date’ means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

“(b) DETERMINATION OF FEE AMOUNT.—

“(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

“(A) the covered entity’s net premiums written with respect to health insurance for any United States health risk that are taken into account during the preceding calendar year, bears to

“(B) the aggregate net premiums written with respect to such health insurance of all covered enti-

ties that are taken into account during such preceding calendar year.

“(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

“With respect to a covered entity’s net premiums written during the calendar year that are:	The percentage of net premiums written that are taken into account is:
Not more than \$25,000,000 .....	0 percent
More than \$25,000,000 but not more than \$50,000,000 .....	50 percent
More than \$50,000,000 .....	100 percent.

“(B) PARTIAL EXCLUSION FOR CERTAIN EXEMPT ACTIVITIES.—After the application of subparagraph (A), only 50 percent of the remaining net premiums written with respect to health insurance for any United States health risk that are attributable to the activities (other than activities of an unrelated trade or business as defined in section 513 of the Internal Revenue Code of 1986) of any covered entity qualifying under paragraph (3), (4), (26), or (29) of section 501(c) of such Code and exempt from tax under section 501(a) of such Code shall be taken into account.

“(3) SECRETARIAL DETERMINATION.—The Secretary shall calculate the amount of each covered entity’s fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity’s net premiums written with respect to any United States health risk on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.

“(c) COVERED ENTITY.—

“(1) IN GENERAL.—For purposes of this section, the term ‘covered entity’ means any entity which provides health insurance for any United States health risk during the calendar year in which the fee under this section is due.

“(2) EXCLUSION.—Such term does not include—

“(A) any employer to the extent that such employer self-insures its employees’ health risks,

“(B) any governmental entity,

“(C) any entity—

“(i) which is incorporated as a nonprofit corporation under a State law,

“(ii) no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

“(iii) more than 80 percent of the gross revenues of which is received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], and

“(D) any entity which is described in section 501(c)(9) of such Code and which is established by an entity (other than by an employer or employers) for purposes of providing health care benefits.

“(3) CONTROLLED GROUPS.—

“(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer

under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity (or employer for purposes of paragraph (2)).

“(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

If any entity described in subparagraph (C) or (D) of paragraph (2) is treated as a covered entity by reason of the application of the preceding sentence, the net premiums written with respect to health insurance for any United States health risk of such entity shall not be taken into account for purposes of this section.

“(4) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (3), all such persons shall be jointly and severally liable for payment of such fee.

“(d) UNITED STATES HEALTH RISK.—For purposes of this section, the term ‘United States health risk’ means the health risk of any individual who is—

“(1) a United States citizen,

“(2) a resident of the United States (within the meaning of section 7701(b)(1)(A) of the Internal Revenue Code of 1986), or

“(3) located in the United States, with respect to the period such individual is so located.

“(e) APPLICABLE AMOUNT.—For purposes of subsection (b)(1)—

“(1) YEARS BEFORE 2019.—In the case of calendar years beginning before 2019, the applicable amount shall be determined in accordance with the following table:

“Calendar year	Applicable amount
2014 .....	\$8,000,000,000
2015 .....	\$11,300,000,000
2016 .....	\$11,300,000,000
2017 .....	\$13,900,000,000
2018 .....	\$14,300,000,000.

“(2) YEARS AFTER 2018.—In the case of any calendar year beginning after 2018, the applicable amount shall be the applicable amount for the preceding calendar year increased by the rate of premium growth (within the meaning of section 36B(b)(3)(A)(ii) of the Internal Revenue Code of 1986) for such preceding calendar year.

“(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

“(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

“(2) for purposes of section 275 of such Code shall be considered to be a tax described in section 275(a)(6).

“(g) REPORTING REQUIREMENT.—

“(1) IN GENERAL.—Not later than the date determined by the Secretary following the end of any calendar year, each covered entity shall report to the Secretary, in such manner as the Secretary prescribes, the covered entity’s net premiums written with respect to health insurance for any United States health risk for such calendar year.

“(2) PENALTY FOR FAILURE TO REPORT.—

“(A) IN GENERAL.—In the case of any failure to make a report containing the information required by paragraph (1) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the covered entity failing to file such report, an amount equal to—

“(i) \$10,000, plus

“(ii) the lesser of—

“(I) an amount equal to \$1,000, multiplied by the number of days during which such failure continues, or

“(II) the amount of the fee imposed by this section for which such report was required.

“(B) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A)—

“(i) shall be treated as a penalty for purposes of subtitle F of the Internal Revenue Code of 1986,

“(ii) shall be paid on notice and demand by the Secretary and in the same manner as tax under such Code, and

“(iii) with respect to which only civil actions for refund under procedures of such subtitle F shall apply.

“(3) ACCURACY-RELATED PENALTY.—

“(A) IN GENERAL.—In the case of any understatement of a covered entity’s net premiums written with respect to health insurance for any United States health risk for any calendar year, there shall be paid by the covered entity making such understatement, an amount equal to the excess of—

“(i) the amount of the covered entity’s fee under this section for the calendar year the Secretary determines should have been paid in the absence of any such understatement, over

“(ii) the amount of such fee the Secretary determined based on such understatement.

“(B) UNDERSTATEMENT.—For purposes of this paragraph, an understatement of a covered entity’s net premiums written with respect to health insurance for any United States health risk for any calendar year is the difference between the amount of such net premiums written as reported on the return filed by the covered entity under paragraph (1) and the amount of such net premiums written that should have been reported on such return.

“(C) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A) shall be subject to the provisions of subtitle F of the Internal Revenue Code of 1986 that apply to assessable penalties imposed under chapter 68 of such Code.

“(4) TREATMENT OF INFORMATION.—Section 6103 of the Internal Revenue Code of 1986 shall not apply to any information reported under this subsection.

“(h) ADDITIONAL DEFINITIONS.—For purposes of this section—

“(1) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or the Secretary’s delegate.

“(2) UNITED STATES.—The term ‘United States’ means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

“(3) HEALTH INSURANCE.—The term ‘health insurance’ shall not include—

“(A) any insurance coverage described in paragraph (1)(A) or (3) of section 9832(c) of the Internal Revenue Code of 1986,

“(B) any insurance for long-term care, or

“(C) any medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act [42 U.S.C. 1395ss(g)(1)]).

“(i) GUIDANCE.—The Secretary shall publish guidance necessary to carry out the purposes of this section and shall prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this section, including inappropriate actions taken to qualify as an exempt entity under subsection (c)(2).

“(j) EFFECTIVE DATE.—This section shall apply to calendar years—

“(1) beginning after December 31, 2013, and ending before January 1, 2017, and

“(2) beginning after December 31, 2017.”

[Pub. L. 111–152, title I, §1406(a)(3)(C), Mar. 30, 2010, 124 Stat. 1065, which directed amendment of section 9010(c) of Pub. L. 111–148, set out above, by substituting “subparagraph (C) or (D)” for “subparagraph (C)(i)(I), (D)(i)(I), or (E)(i)” in par. (3)(A), was executed by making the substitution in concluding provisions of par. (3), to reflect the probable intent of Congress.]

[Pub. L. 111–152, title I, §1406(b), Mar. 30, 2010, 124 Stat. 1067, provided that: “The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in section 9010 of the Patient Protection and Affordable Care Act [Pub. L. 111–148].”]

[Pub. L. 111–148, title X, §10905(g), Mar. 23, 2010, 124 Stat. 1019, provided that: “The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in the enactment of section 9010.”]

## CHAPTER 31—RETAIL EXCISE TAXES

Subchapter	Sec. <sup>1</sup>
A. Repealed.]	
B. Special fuels .....	4041
C. Heavy trucks and trailers .....	4051

### PRIOR PROVISIONS

The provisions of a prior chapter 31, Miscellaneous Excise Taxes, were set out as:

Subchapter (A), Jewelry and related items, comprising sections 4001 to 4003;

Subchapter (B), Furs, comprising sections 4011 to 4013;

Subchapter (C), Toilet preparations, comprising sections 4021 and 4022;

Subchapter (D), Luggage, handbags, etc., comprising section 4031;

Subchapter (E), Special fuels, comprising sections 4041 and 4042; and

Subchapter (F), Special provisions applicable to retailers tax, comprising sections 4051 to 4058.

The headings for subchs. (A) to (D) were struck out by section 101(b)(1) and the listed sections were repealed by section 101(a) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, the Excise Tax Reduction Act of 1965, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

The headings for subchs. (E) and (F) were stricken by section 1904(a)(1)(A) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1810, the Tax Reform Act of 1976. Sections 4051 to 4053 were repealed by section 101(b)(2) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4061 of this title; and sections 4042 and 4054 to 4058 were repealed by section 1904(a)(1)(D) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1811, effective Feb. 1, 1977, as provided in section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

The subject matter of the prior sections was as follows:

A prior section 4001, acts Aug. 16, 1954, ch. 736, 68A Stat. 473; Sept. 2, 1958, Pub. L. 85–859, title I, §101, 72 Stat. 1275; Sept. 21, 1959, Pub. L. 86–344, §1(a), 73 Stat. 617, imposed an excise tax equivalent to 10 percent of selling price upon jewelry, stones, watches, clocks, case and movements for watches and clocks, flatware and hollow ware, opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

A prior section 4002, act Aug. 16, 1954, ch. 736, 68A Stat. 473, defined “articles sold at retail” to include articles sold at auction.

A prior section 4003, acts Aug. 16, 1954, ch. 736, 68A Stat. 474; Sept. 2, 1958, Pub. L. 85–859, title I, §102, 72 Stat. 1276, specified exemptions to tax imposed by section 4001.

A prior section 4011, act Aug. 16, 1954, ch. 736, 68A Stat. 475, imposed an excise tax equivalent to 10 percent of selling price upon fur articles.

A prior section 4012, act Aug. 16, 1954, ch. 736, 68A Stat. 475, defined “article sold at retail” to include ar-

<sup>1</sup> Section numbers editorially supplied.

ticles manufactured from material supplied by customer and articles sold at auction.

A prior section 4013, act Aug. 16, 1954, ch. 736, 68A Stat. 475, specified exemptions to tax imposed by section 4011.

A prior section 4021, acts Aug. 16, 1954, ch. 736, 68A Stat. 476; Apr. 8, 1960, Pub. L. 86-413, § 1, 74 Stat. 31, imposed an excise tax equivalent to 10 percent of selling price upon toilet preparations.

A prior section 4022, act Aug. 16, 1954, ch. 736, 68A Stat. 476, specified certain exemptions from tax imposed by section 4021, including items for babies, items used in barber shops and beauty parlors, and miniature samples.

A prior section 4031, acts Aug. 16, 1954, ch. 736, 68A Stat. 477; Sept. 2, 1958, Pub. L. 85-859, title I, § 103, 72 Stat. 1276, imposed an excise tax equivalent to 10 percent of selling price upon luggage and handbags, including billfolds and wallets, traveler's garment bags, and briefcases.

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, provided a cross reference to section 4222 for exemption from tax where special motor fuels are sold for use for certain vessels.

A prior section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined price for which articles were sold for purposes of determining retailers excise taxes.

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered sale of article for excise tax purposes.

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85-859, title I, § 104, 72 Stat. 1276, made provision for imposition of retailers tax on installment sales.

A prior section 4054, act Aug. 16, 1954, ch. 736, 68A Stat. 479, related to application of taxes to retail sales by United States or by any agency or instrumentality of United States unless specifically exempted from such tax.

A prior section 4055, act Aug. 16, 1954, ch. 736, 68A Stat. 480; June 21, 1965, Pub. L. 89-44, title I, § 101(b)(3), 79 Stat. 136, exempted from taxes articles sold for exclusive use of any State, Territory of United States, or any political subdivision thereof, or District of Columbia, including use by such entities of any liquid as a fuel.

A prior section 4056, act Aug. 16, 1954, ch. 736, 68A Stat. 480, provided that no tax shall be imposed upon sale of any article for export, or for shipment to a possession of United States and in due course so shipped and exported.

A prior section 4057, added Pub. L. 85-859, title I, § 105(a), Sept. 2, 1958, 72 Stat. 1277; amended Pub. L. 86-344, § 2(a), Sept. 21, 1959, 73 Stat. 617; Pub. L. 89-44, title I, § 101(b)(4), June 21, 1965, 79 Stat. 136; Pub. L. 91-172, title I, § 101(j)(25), Dec. 30, 1969, 83 Stat. 528, provided an exception with respect to sale of any article to a non-profit educational organization for its exclusive use including use of any liquid as a fuel and defined "non-profit educational organization".

A prior section 4058, act Aug. 16, 1954, ch. 736, 68A Stat. 480, § 4058, formerly 4057; renumbered Sept. 2, 1958, Pub. L. 85-859, title I, § 105(a), 72 Stat. 1277, related to cross references for exemption of sales to United States in certain cases and administrative provisions of general application.

#### AMENDMENTS

2014—Pub. L. 113-295, div. A, title II, § 221(a)(103)(A), Dec. 19, 2014, 128 Stat. 4052, struck out item for subchapter A "Luxury passenger vehicles".

1993—Pub. L. 103-66, title XIII, § 13161(b)(3), Aug. 10, 1993, 107 Stat. 453, substituted "Luxury passenger vehicles" for "Certain luxury items" in item for subchapter A.

1990—Pub. L. 101-508, title XI, § 11221(e), Nov. 5, 1990, 104 Stat. 1388-444, added item for subchapter A and redesignated former items for subchapters A and B as B and C, respectively.

1983—Pub. L. 97-424, title V, § 512(b)(2)(A), Jan. 6, 1983, 96 Stat. 2177, substituted "Retail Excise Taxes" for

"Special Fuels" in chapter heading, and added an analysis for subchapters A and B.

1976—Pub. L. 94-455, title XIX, § 1904(a)(1)(A), Oct. 4, 1976, 90 Stat. 1810, substituted "Special Fuels" for "Retailers Excise Taxes" in chapter heading.

#### [Subchapter A—Repealed]

##### PRIOR PROVISIONS

This subchapter consisted of part I with subparts A (§§ 4001-4004) and B (§§ 4006, 4007) and part II (§§ 4011, 4012), prior to being amended generally by Pub. L. 103-66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449.

Another prior subchapter A of chapter 31 was redesignated subchapter B by Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-438.

#### [§§ 4001 to 4003. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(103)(A), Dec. 19, 2014, 128 Stat. 4052]

Section 4001, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-439; amended Pub. L. 103-66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449; Pub. L. 104-188, title I, §§ 1607(a), (b), 1703(c)(1), Aug. 20, 1996, 110 Stat. 1839, 1875; Pub. L. 105-34, title IX, § 906(a)-(b)(2), title XVI, § 1601(f)(3)(A), (B), Aug. 5, 1997, 111 Stat. 874, 875, 1090, provided for imposition of tax on luxury passenger vehicles.

Section 4002, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-439; amended Pub. L. 103-66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 450, related to 1st retail sale, uses treated as sales, and determination of price.

Section 4003, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-439; amended Pub. L. 103-66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 451; Pub. L. 105-34, title IX, § 906(b)(3), (4), title XIV, § 1401(a), Aug. 5, 1997, 111 Stat. 875, 1045, related to special rules for separate purchase of vehicles, parts and accessories.

Prior sections 4004, 4006, 4007, 4011, and 4012 of this title were omitted in the general revision of this subchapter by Pub. L. 103-66, title XIII, § 13161(a), Aug. 10, 1993, 107 Stat. 449.

Section 4004, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-440; amended Pub. L. 103-66, title XIII, § 13162(a), Aug. 10, 1993, 107 Stat. 453, related to certain rules applicable to former subpart A of part I of this subchapter.

Section 4006, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-441, related to imposition of tax on 1st retail sale of jewelry.

Section 4007, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-442, related to imposition of tax on 1st retail sale of furs.

Section 4011, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-442, provided definitions and special rules for purposes of this subchapter.

Section 4012, added Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-444, provided that taxes imposed by this subchapter did not apply to any sale or use after Dec. 31, 1999.

##### EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

#### Subchapter B—Special Fuels

- |                                 |   |
|---------------------------------|---|
| Sec.<br>4041.<br>4042.<br>4043. | Imposition of tax.<br>Tax on fuel used in commercial transportation on inland waterways.<br>Surtax on fuel used in aircraft part of a fractional ownership program. |
|---------------------------------|---|

##### PRIOR PROVISIONS

A prior subchapter B of chapter 31 was redesignated subchapter C by Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-438.

## AMENDMENTS

2012—Pub. L. 112-95, title XI, § 1103(a)(4), Feb. 14, 2012, 126 Stat. 151, added item 4043.

1990—Pub. L. 101-508, title XI, § 11221(a), Nov. 5, 1990, 104 Stat. 1388-438, redesignated this subchapter, formerly subchapter A, as subchapter B. Former subchapter B redesignated C.

1978—Pub. L. 95-502, title II, § 202(c), Oct. 21, 1978, 92 Stat. 1697, added item 4042.

1976—Pub. L. 94-455, title XIX, § 1904(a)(1)(A), Oct. 4, 1976, 90 Stat. 1810, added item 4041.

**§ 4041. Imposition of tax****(a) Diesel fuel and special motor fuels****(1) Tax on diesel fuel and kerosene in certain cases****(A) In general**

There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)—

(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or a diesel-powered train for use as a fuel in such vehicle or train, or

(ii) used by any person as a fuel in a diesel-powered highway vehicle or a diesel-powered train unless there was a taxable sale of such fuel under clause (i).

**(B) Exemption for previously taxed fuel**

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate) and the tax thereon was not credited or refunded.

**(C) Rate of tax****(i) In general**

Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on diesel fuel which is in effect at the time of such sale or use.

**(ii) Rate of tax on trains**

In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

(I) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

(II) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

(III) 0 after December 31, 2006.

**(iii) Rate of tax on certain buses****(I) In general**

Except as provided in subclause (II), in the case of fuel sold for use or used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after September 30, 2022).

**(II) School bus and intracity transportation**

No tax shall be imposed by this paragraph on any sale for use, or use, de-

scribed in subparagraph (B) or (C) of section 6427(b)(2).

**(2) Alternative fuels****(A) In general**

There is hereby imposed a tax on any liquid (other than gas oil, fuel oil, or any product taxable under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate))—

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under clause (i).

**(B) Rate of tax**

The rate of the tax imposed by this paragraph shall be—

(i) except as otherwise provided in this subparagraph, the rate of tax specified in section 4081(a)(2)(A)(i) which is in effect at the time of such sale or use,

(ii) in the case of liquefied petroleum gas, 18.3 cents per energy equivalent of a gallon of gasoline,

(iii) in the case of any liquid fuel (other than ethanol and methanol) derived from coal (including peat) and liquid hydrocarbons derived from biomass (as defined in section 45K(c)(3)), 24.3 cents per gallon, and

(iv) in the case of liquefied natural gas, 24.3 cents per energy equivalent of a gallon of diesel.

**(C) Energy equivalent of a gallon of gasoline**

For purposes of this paragraph, the term “energy equivalent of a gallon of gasoline” means, with respect to a liquefied petroleum gas fuel, the amount of such fuel having a Btu content of 115,400 (lower heating value). For purposes of the preceding sentence, a Btu content of 115,400 (lower heating value) is equal to 5.75 pounds of liquefied petroleum gas.

**(D) Energy equivalent of a gallon of diesel**

For purposes of this paragraph, the term “energy equivalent of a gallon of diesel” means, with respect to a liquefied natural gas fuel, the amount of such fuel having a Btu content of 128,700 (lower heating value). For purposes of the preceding sentence, a Btu content of 128,700 (lower heating value) is equal to 6.06 pounds of liquefied natural gas.

**(3) Compressed natural gas****(A) In general**

There is hereby imposed a tax on compressed natural gas—

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such gas under clause (i).

The rate of the tax imposed by this paragraph shall be 18.3 cents per energy equivalent of a gallon of gasoline.

**(B) Bus uses**

No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).

**(C) Administrative provisions**

For purposes of applying this title with respect to the taxes imposed by this subsection, references to any liquid subject to tax under this subsection shall be treated as including references to compressed natural gas subject to tax under this paragraph, and references to gallons shall be treated as including references to energy equivalent of a gallon of gasoline with respect to such gas.

**(D) Energy equivalent of a gallon of gasoline**

For purposes of this paragraph, the term “energy equivalent of a gallon of gasoline” means 5.66 pounds of compressed natural gas.

**(b) Exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel**

**(1) Exemption for off-highway business use**

**(A) In general**

No tax shall be imposed by subsection (a) on liquids sold for use or used in an off-highway business use.

**(B) Tax where other use**

If a liquid on which no tax was imposed by reason of subparagraph (A) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

**(C) Off-highway business use defined**

For purposes of this subsection, the term “off-highway business use” has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.

**(2) Qualified methanol and ethanol fuel**

**(A) In general**

In the case of any qualified methanol or ethanol fuel—

(i) the rate applicable under subsection (a)(2) shall be the applicable blender rate per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and

(ii) subsection (d)(1) shall be applied by substituting “0.05 cent” for “0.1 cent” with respect to the sales and uses to which clause (i) applies.

**(B) Qualified methanol and ethanol fuel produced from coal**

The term “qualified methanol or ethanol fuel” means any liquid at least 85 percent of

which consists of methanol, ethanol, or other alcohol produced from coal (including peat).

**(C) Applicable blender rate**

For purposes of subparagraph (A)(i), the applicable blender rate is—

(i) except as provided in clause (ii), 5.4 cents, and

(ii) for sales or uses during calendar years 2001 through 2008,  $\frac{1}{10}$  of the blender amount applicable under section 40(h)(2) for the calendar year in which the sale or use occurs.

**(D) Termination**

On and after January 1, 2009, subparagraph (A) shall not apply.

**(c) Certain liquids used as a fuel in aviation**

**(1) In general**

There is hereby imposed a tax upon any liquid for use as a fuel other than aviation gasoline—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

**(2) Exemption for previously taxed fuel**

No tax shall be imposed by this subsection on the sale or use of any liquid for use as a fuel other than aviation gasoline if tax was imposed on such liquid under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate) and the tax thereon was not credited or refunded.

**(3) Rate of tax**

The rate of tax imposed by this subsection shall be 21.8 cents per gallon (4.3 cents per gallon with respect to any sale or use for commercial aviation).

**(d) Additional taxes to fund Leaking Underground Storage Tank Trust Fund**

**(1) Tax on sales and uses subject to tax under subsection (a)**

In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas and other than liquefied natural gas) if tax is imposed by subsection (a)(1) or (2) on such sale or use. No tax shall be imposed under the preceding sentence on the sale or use of any liquid if tax was imposed with respect to such liquid under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

**(2) Liquids used in aviation**

In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than gasoline (as defined in section 4083))—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4081.

**(3) Diesel fuel used in trains**

In the case of any sale for use or use after December 31, 2006, there is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.

**(4) Termination**

The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

**(5) Nonapplication of exemptions other than for exports**

For purposes of this section, the tax imposed under this subsection shall be determined without regard to subsections (b)(1)(A), (f), (g), (h), and (i). The preceding sentence shall not apply with respect to subsection (g)(3) and so much of subsection (g)(1) as relates to vessels (within the meaning of section 4221(d)(3)) employed in foreign trade or trade between the United States and any of its possessions.

**[(e) Repealed. Pub. L. 108-357, title VIII, § 853(d)(2)(C), Oct. 22, 2004, 118 Stat. 1613]**

**(f) Exemption for farm use**

**(1) Exemption**

Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

**(2) Use on a farm for farming purposes**

For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

**(g) Other exemptions**

Under regulations prescribed by the Secretary, no tax shall be imposed under this section—

(1) on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3));

(2) with respect to the sale of any liquid for the exclusive use of any State, any political subdivision of a State, or the District of Columbia, or with respect to the use by any of the foregoing of any liquid as a fuel;

(3) upon the sale of any liquid for export, or for shipment to a possession of the United States, and in due course so exported or shipped;

(4) with respect to the sale of any liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a

nonprofit educational organization of any liquid as a fuel; and

(5) with respect to the sale of any liquid to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood.

For purposes of paragraph (4), the term “nonprofit educational organization” means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

**(h) Exemption for use by certain aircraft museums**

**(1) Exemption**

Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used by an aircraft museum in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

**(2) Definition of aircraft museum**

For purposes of this subsection, the term “aircraft museum” means an organization—

(A) described in section 501(c)(3) which is exempt from income tax under section 501(a),

(B) operated as a museum under charter by a State or the District of Columbia, and

(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

**[(i) Repealed. Pub. L. 108-357, title VIII, § 853(d)(2)(D), Oct. 22, 2004, 118 Stat. 1613]**

**(j) Sales by United States, etc.**

The taxes imposed by this section shall apply with respect to liquids sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes.

**[(k) Repealed. Pub. L. 108-357, title III, § 301(c)(6), Oct. 22, 2004, 118 Stat. 1461]**

**(l) Exemption for certain uses**

No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which the requirements of subsection (f) or (g) of section 4261 are met.

**(m) Certain alcohol fuels**

**(1) In general**

In the case of the sale or use of any partially exempt methanol or ethanol fuel the rate of the tax imposed by subsection (a)(2) shall be—

(A) after September 30, 1997, and before October 1, 2022—



(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

(ii) in any other case, 11.3 cents per gallon, and

(B) after September 30, 2022—

(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

(ii) in any other case, 4.3 cents per gallon.

## (2) Partially exempt methanol or ethanol fuel

The term “partially exempt methanol or ethanol fuel” means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

(Aug. 16, 1954, ch. 736, 68A Stat. 478; Mar. 30, 1955, ch. 18, §3(a)(1), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(1), 70 Stat. 66; Apr. 2, 1956, ch. 160, §2(a)(1), 70 Stat. 89; June 29, 1956, ch. 462, title II, §202, 70 Stat. 387; Pub. L. 85-859, title I, §119(b)(1), Sept. 2, 1958, 72 Stat. 1286; Pub. L. 86-342, title II, §201(b), Sept. 21, 1959, 73 Stat. 613; Pub. L. 87-61, title II, §201(a), (c), (d), June 29, 1961, 75 Stat. 123, 124; Pub. L. 89-44, title VIII, §802(a)(2), June 21, 1965, 79 Stat. 159; Pub. L. 91-258, title II, §202, May 21, 1970, 84 Stat. 237; Pub. L. 91-605, title III, §303(a)(1), (2), Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94-280, title III, §303(a)(1), (2), May 5, 1976, 90 Stat. 456; Pub. L. 94-455, title XIX, §§1904(a)(1)(B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1810, 1811, 1834; Pub. L. 94-530, §1(a), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95-599, title V, §502(a)(1), (b), Nov. 6, 1978, 92 Stat. 2756, 2757; Pub. L. 95-600, title VII, §703(l)(1), (2), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 95-618, title II, §§221(b)(1), 222(a)(2), 233(a)(3)(B), Nov. 9, 1978, 92 Stat. 3185, 3187, 3191; Pub. L. 96-223, title II, §232(a)(2), Apr. 2, 1980, 94 Stat. 273; Pub. L. 96-298, §1(a), July 1, 1980, 94 Stat. 829; Pub. L. 97-248, title II, §279(a), (b)(1), Sept. 3, 1982, 96 Stat. 563; Pub. L. 97-424, title V, §§511(a)(2), (b)(1), (c)(2), (d)(2), (g)(1), 516(a)(1), (b)(1), Jan. 6, 1983, 96 Stat. 2169-2171, 2173, 2182, 2183; Pub. L. 98-369, div. A, title IX, §§911(a), 912(a), 913(a), title X, §1018(a), July 18, 1984, 98 Stat. 1005, 1007, 1008, 1021; Pub. L. 99-499, title V, §521(a)(2), (d)(1)-(3), Oct. 17, 1986, 100 Stat. 1776, 1779; Pub. L. 99-514, title IV, §422(a)(1), (2), title XVII, §1702(a), title XVIII, §1878(c)(1), Oct. 22, 1986, 100 Stat. 2229, 2773, 2903; Pub. L. 100-17, title V, §502(a)(1), (b)(1)-(3), (c)(1), Apr. 2, 1987, 101 Stat. 256, 257; Pub. L. 100-203, title X, §10502(b), Dec. 22, 1987, 101 Stat. 1330-441; Pub. L. 100-223, title IV, §§402(b), 404(b), 405(b)(3), Dec. 30, 1987, 101 Stat. 1532, 1533, 1535; Pub. L. 100-647, title I, §1017(c)(3), (4), title II, §2001(d)(2), (3)(A)-(D), Nov. 10, 1988, 102 Stat. 3576, 3595; Pub. L. 101-508, title XI, §§11211(a)(4), (b)(3), (6)(C)-(E)(i), (F), (d)(1), (2), (e)(1), (2), 11213(b)(2)(A), (B), (d)(2)(B), (e)(3), Nov. 5, 1990, 104 Stat. 1388-423, 1388-425 to 1388-427, 1388-433, 1388-436; Pub. L. 102-240, title VIII, §8002(b)(1), (2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103-66, title XIII, §§13163(a)(2), 13241(b)(2)(A), (B)(iii), (c), (e), (f)(1), (2), 13242(d)(3)-(13), Aug. 10, 1993, 107 Stat. 453, 510, 511, 522-524; Pub. L. 104-188, title I, §§1208, 1609(a)(3), (g)(3), (4)(A), Aug. 20, 1996, 110 Stat. 1776, 1841-1843; Pub. L. 105-2, §2(a)(3), Feb. 28,

1997, 111 Stat. 4; Pub. L. 105-34, title IX, §§902(b)(1), (2), 907(a), (b), title X, §§1031(a)(3), 1032(e)(1), (2), title XIV, §1435(b), title XVI, §1601(f)(4)(A), (B), Aug. 5, 1997, 111 Stat. 873, 875, 929, 935, 1053, 1090; Pub. L. 105-178, title IX, §§9002(a)(1)(A)-(C), 9003(a)(1)(A), (B), (b)(2)(A), 9006(a), June 9, 1998, 112 Stat. 499, 501, 502, 506; Pub. L. 105-206, title VI, §6010(g)(1), July 22, 1998, 112 Stat. 814; Pub. L. 108-357, title II, §241(a)(1), (2)(A), title III, §301(c)(5), (6), title VIII, §853(a)(6), (d)(2)(A)-(E), Oct. 22, 2004, 118 Stat. 1437, 1461, 1611-1613; Pub. L. 109-58, title XIII, §1362(b)(2), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109-59, title XI, §§11101(a)(1)(A)-(C), 11113(a), 11151(e)(2), 11161(b)(1), (3)(A), Aug. 10, 2005, 119 Stat. 1943, 1946, 1969-1971; Pub. L. 109-280, title XII, §1207(a), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 109-432, div. A, title II, §208, Dec. 20, 2006, 120 Stat. 2946; Pub. L. 110-172, §6(d)(1)(A), (2)(A), (3), Dec. 29, 2007, 121 Stat. 2480, 2481; Pub. L. 112-30, title I, §142(a)(1)(A), (B), (2)(A), Sept. 16, 2011, 125 Stat. 355, 356; Pub. L. 112-102, title IV, §402(a)(1)(A), (B), (2)(A), Mar. 30, 2012, 126 Stat. 281, 282; Pub. L. 112-140, title IV, §402(a)(1)(A), (B), (2)(A), June 29, 2012, 126 Stat. 402; Pub. L. 112-141, div. D, title I, §40102(a)(1)(A), (B), (2)(A), July 6, 2012, 126 Stat. 844; Pub. L. 114-41, title II, §2008(a)-(c), July 31, 2015, 129 Stat. 459, 460; Pub. L. 114-94, div. C, title XXXI, §31102(a)(1)(A), (B), (2)(A), Dec. 4, 2015, 129 Stat. 1727.)

## AMENDMENTS

2015—Subsec. (a)(1)(C)(iii)(I). Pub. L. 114-94, §31102(a)(1)(A), substituted “September 30, 2022” for “September 30, 2016”.

Subsec. (a)(2)(B)(ii). Pub. L. 114-41, §2008(a)(1), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (a)(2)(B)(iii). Pub. L. 114-41, §2008(b)(3), struck out “liquefied natural gas,” before “any liquid fuel” and substituted “peat and” for “peat, and”.

Pub. L. 114-41, §2008(a)(1), redesignated cl. (ii) as (iii).

Subsec. (a)(2)(B)(iv). Pub. L. 114-41, §2008(b)(1), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 114-41, §2008(a)(2), added subpar. (C).

Subsec. (a)(2)(D). Pub. L. 114-41, §2008(b)(2), added subpar. (D).

Subsec. (a)(3)(D). Pub. L. 114-41, §2008(c), added subpar. (D).

Subsec. (m)(1)(A). Pub. L. 114-94, §31102(a)(2)(A), substituted “October 1, 2022” for “October 1, 2016” in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 114-94, §31102(a)(1)(B), substituted “September 30, 2022” for “September 30, 2016” in introductory provisions.

2012—Subsec. (a)(1)(C)(iii)(I). Pub. L. 112-141, §40102(a)(1)(A), substituted “September 30, 2016” for “June 30, 2012”.

Pub. L. 112-140, §§1(c), 402(a)(1)(A), temporarily substituted “July 6, 2012” for “June 30, 2012”. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102, §402(a)(1)(A), substituted “June 30, 2012” for “March 31, 2012”.

Subsec. (m)(1)(A). Pub. L. 112-141, §40102(a)(2)(A), substituted “October 1, 2016” for “July 1, 2012” in introductory provisions.

Pub. L. 112-140, §§1(c), 402(a)(2)(A), temporarily substituted “July 7, 2012” for “July 1, 2012” in introductory provisions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102, §402(a)(2)(A), substituted “July 1, 2012” for “April 1, 2012” in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 112-141, §40102(a)(1)(B), substituted “September 30, 2016” for “June 30, 2012” in introductory provisions.

Pub. L. 112-140, §§1(c), 402(a)(1)(B), temporarily substituted “July 6, 2012” for “June 30, 2012” in introduc-

tory provisions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102, §402(a)(1)(B), substituted “June 30, 2012” for “March 31, 2012” in introductory provisions.

2011—Subsec. (a)(1)(C)(iii)(I). Pub. L. 112-30, §142(a)(1)(A), substituted “March 31, 2012” for “September 30, 2011”.

Subsec. (m)(1)(A). Pub. L. 112-30, §142(a)(2)(A), substituted “April 1, 2012” for “October 1, 2011” in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 112-30, §142(a)(1)(B), substituted “March 31, 2012” for “September 30, 2011” in introductory provisions.

2007—Subsec. (d)(1). Pub. L. 110-172, §6(d)(1)(A), inserted last sentence.

Subsec. (d)(5). Pub. L. 110-172, §6(d)(2)(A), (3), inserted “(b)(1)(A),” after “without regard to subsections”, struck out “(other than with respect to any sale for export under paragraph (3) thereof)” after “(f), (g)”, and inserted last sentence.

2006—Subsec. (b)(2)(B). Pub. L. 109-432, §208(c), substituted “and ethanol fuel produced from coal” for “or ethanol fuel” in heading.

Subsec. (b)(2)(C)(ii). Pub. L. 109-432, §208(b), substituted “2008” for “2007”.

Subsec. (b)(2)(D). Pub. L. 109-432, §208(a), substituted “January 1, 2009” for “October 1, 2007”.

Subsec. (g)(5). Pub. L. 109-280, which directed the addition of par. (5) to section 4041(g), without specifying the act to be amended, was executed to subsec. (g) of this section, which is section 4041 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (a)(1)(B). Pub. L. 109-59, §11161(b)(3)(A), struck out last sentence which read as follows: “This subparagraph shall not apply to aviation-grade kerosene.”

Pub. L. 109-58, §1362(b)(2)(A), inserted “(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)” after “section 4081”.

Subsec. (a)(1)(C)(iii)(I). Pub. L. 109-59, §11101(a)(1)(A), substituted “2011” for “2005”.

Subsec. (a)(2). Pub. L. 109-59, §11113(a)(3), substituted “Alternative fuels” for “Special motor fuels” in heading.

Subsec. (a)(2)(A). Pub. L. 109-58, §1362(b)(2)(A), inserted “(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)” after “section 4081” in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109-59, §11113(a)(1)(C), struck out concluding provisions which read as follows: “In the case of any sale or use after September 30, 2011, clause (ii) shall be applied by substituting ‘3.2 cents’ for ‘13.6 cents’, and clause (iii) shall be applied by substituting ‘2.8 cents’ for ‘11.9 cents’.”

Pub. L. 109-59, §11101(a)(1)(B), substituted “2011” for “2005” in concluding provisions.

Subsec. (a)(2)(B)(i). Pub. L. 109-59, §11113(a)(1)(A), inserted “and” at end.

Subsec. (a)(2)(B)(ii). Pub. L. 109-59, §11151(e)(2), substituted “section 45K(c)(3)” for “section 29(c)(3)”.

Pub. L. 109-59, §11113(a)(1)(B), (D), added cl. (ii) and struck out former cl. (ii) which read as follows: “13.6 cents per gallon in the case of liquefied petroleum gas, and”.

Subsec. (a)(2)(B)(iii). Pub. L. 109-59, §11113(a)(1)(B), struck out cl. (iii) which read as follows: “11.9 cents per gallon in the case of liquefied natural gas.”

Subsec. (a)(3)(A). Pub. L. 109-59, §11113(a)(2)(A), substituted “18.3 cents per energy equivalent of a gallon of gasoline” for “48.54 cents per MCF (determined at standard temperature and pressure)” in concluding provisions.

Subsec. (a)(3)(C). Pub. L. 109-59, §11113(a)(2)(B), substituted “energy equivalent of a gallon of gasoline” for “MCF”.

Subsec. (b)(1)(A). Pub. L. 109-58, §1362(b)(2)(B), which directed amendment of subpar. (A) by striking out “or (d)(1)”, was executed by striking out “or (d)(1)” after “subsection (a)” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 109-59, §11161(b)(1)(D), substituted “Certain liquids used as a fuel in aviation” for “Aviation-grade kerosene” in heading.

Subsec. (c)(1). Pub. L. 109-59, §11161(b)(1)(A), substituted “any liquid for use as a fuel other than aviation gasoline” for “aviation-grade kerosene” in introductory provisions.

Subsec. (c)(2). Pub. L. 109-59, §11161(b)(1)(B), substituted “liquid for use as a fuel other than aviation gasoline” for “aviation-grade kerosene”.

Pub. L. 109-58, §1362(b)(2)(A), inserted “(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)” after “section 4081”.

Subsec. (c)(3). Pub. L. 109-59, §11161(b)(1)(C), added par. (3) and struck out former par. (3) which read as follows: “The rate of tax imposed by this subsection shall be the rate of tax applicable under section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.”

Subsec. (d)(5). Pub. L. 109-58, §1362(b)(2)(C), added par. (5).

Subsec. (m)(1)(A), (B). Pub. L. 109-59, §11101(a)(1)(C), substituted “2011” for “2005” in introductory provisions.

2004—Subsec. (a)(1). Pub. L. 108-357, §853(a)(6)(B), inserted “and kerosene” after “diesel fuel” in heading.

Subsec. (a)(1)(B). Pub. L. 108-357, §853(a)(6)(A), inserted at end “This subparagraph shall not apply to aviation-grade kerosene.”

Subsec. (a)(1)(C)(ii)(I) to (III). Pub. L. 108-357, §241(a)(1), added subcls. (I) to (III) and struck out former subcls. (I) to (III) which read as follows:

“(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

“(II) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

“(III) 4.3 cents per gallon after October 31, 1998.”

Subsec. (b)(2)(B). Pub. L. 108-357, §301(c)(5), substituted “coal (including peat)” for “a substance other than petroleum or natural gas”.

Subsec. (c). Pub. L. 108-357, §853(d)(2)(A), amended heading and text of subsec. (c) generally, substituting provisions relating to imposition of tax upon aviation-grade kerosene and providing exemption for fuel previously taxed under section 4081, for provisions relating to imposition of tax on nongasoline fuels where no tax had been imposed under section 4091.

Subsec. (d)(2). Pub. L. 108-357, §853(d)(2)(B), substituted “section 4081” for “section 4091” in concluding provisions.

Subsec. (d)(3), (4). Pub. L. 108-357, §241(a)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 108-357, §853(d)(2)(C), struck out heading and text of subsec. (e). Text read as follows: “If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.”

Subsec. (i). Pub. L. 108-357, §853(d)(2)(D), struck out heading and text of subsec. (i). Text read as follows: “If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnished such information in respect of the use of the liquid) as the Secretary shall by regulations provide.”

Subsec. (k). Pub. L. 108-357, §301(c)(6), struck out subsec. (k) which related to rates of tax in the case of the sale or use of any fuels containing alcohol.

Subsec. (m)(1). Pub. L. 108-357, §853(d)(2)(E), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to rates of tax after Sept. 30, 1997, and before Oct. 1, 2005, and rates of tax after Sept. 30, 2005, for provisions relating to rates of tax after Sept. 30, 1997, and before Oct. 1, 2005, rates of tax after Sept. 30, 2005, and rate of tax imposed by subsec. (c)(1).

1998—Subsec. (a)(1)(C)(ii)(II). Pub. L. 105-178, §9006(a)(1), substituted “November 1, 1998” for “October 1, 1999”.

Subsec. (a)(1)(C)(ii)(III). Pub. L. 105-178, §9006(a)(2), substituted "October 31, 1998" for "September 30, 1999".

Subsec. (a)(1)(C)(iii)(I). Pub. L. 105-178, §9002(a)(1)(A), substituted "2005" for "1999".

Subsec. (a)(2)(B). Pub. L. 105-178, §9002(a)(1)(B), substituted "2005" for "1999" in concluding provisions.

Subsec. (b)(2)(A)(i). Pub. L. 105-178, §9003(b)(2)(A)(i), substituted "the applicable blender rate" for "5.4 cents".

Subsec. (b)(2)(C). Pub. L. 105-178, §9003(b)(2)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 105-178, §9003(a)(1)(A), substituted "2007" for "2000".

Subsec. (b)(2)(D). Pub. L. 105-178, §9003(b)(2)(A)(ii), redesignated subpar. (C) as (D).

Subsec. (k)(3). Pub. L. 105-178, §9003(a)(1)(B), substituted "2007" for "2000".

Subsec. (l). Pub. L. 105-206 substituted "subsection (f) or (g)" for "subsection (e) or (f)".

Subsec. (m)(1)(A). Pub. L. 105-178, §9002(a)(1)(C), substituted "2005" for "1999" in two places.

1997—Subsec. (a)(1)(A). Pub. L. 105-34, §902(b)(1), substituted "or a diesel-powered train" for "a diesel-powered train, or a diesel-powered boat" in cls. (i) and (ii) and "vehicle or train" for "vehicle, train, or boat" in cl. (i).

Subsec. (a)(1)(D). Pub. L. 105-34, §902(b)(2), struck out heading and text of subpar. (D). Text read as follows: "In the case of any sale for use, or use, of fuel in a diesel-powered motorboat—

"(i) no tax shall be imposed by subsection (a) or (d)(1) during the period beginning on the date which is 7 days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1997,

"(ii) effective during the period after September 30, 1999, and before January 1, 2000, the rate of tax imposed by this paragraph is 24.3 cents per gallon, and

"(iii) the termination of the tax under subsection (d) shall not occur before January 1, 2000."

Subsec. (a)(2). Pub. L. 105-34, §907(a)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "There is hereby imposed a tax on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A)(i) on gasoline which is in effect at the time of such sale or use."

Pub. L. 105-34, §1601(f)(4)(B), substituted "section 4081(a)(2)(A)(i)" for "section 4081(a)(2)(A)" in concluding provisions.

Subsec. (a)(2)(A). Pub. L. 105-34, §1032(e)(1), struck out "kerosene," after "(other than)" in introductory provisions.

Subsec. (c)(1). Pub. L. 105-34, §1032(e)(2), substituted "kerosene and any other liquid" for "any liquid" in introductory provisions.

Subsec. (c)(2). Pub. L. 105-34, §1435(b), inserted "or by reason of section 4261(h)" before period at end.

Subsec. (c)(3). Pub. L. 105-2 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The taxes imposed by paragraph (1) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1995, and during the period beginning on the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996. The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon."

Subsec. (c)(3)(B). Pub. L. 105-34, §1031(a)(3), substituted "September 30, 2007" for "September 30, 1997".

Subsec. (d)(1). Pub. L. 105-34, §907(a)(2), inserted "and other than liquefied natural gas" after "liquefied petroleum gas".

Subsec. (l). Pub. L. 105-34, §1601(f)(4)(A), struck out "helicopter" after "certain" in heading and inserted "or a fixed-wing aircraft" after "helicopter" in text.

Subsec. (m)(1)(A). Pub. L. 105-34, §907(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the rate of the tax imposed by subsection (a)(2) shall be—

"(i) 11.3 cents per gallon after September 30, 1993, and before October 1, 1999, and

"(ii) 4.3 cents per gallon after September 30, 1999, and".

1996—Subsec. (a)(1)(D). Pub. L. 104-188, §1208, added cl. (i) and redesignated former cls. (i) and (ii) as (ii) and (iii), respectively.

Subsec. (c)(2). Pub. L. 104-188, §1609(g)(3)(A), redesignated par. (4) as (2) and struck out former par. (2) which read as follows:

"(2) GASOLINE.—There is hereby imposed a tax (at the rate specified in paragraph (3)) upon gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081."

Subsec. (c)(3). Pub. L. 104-188, §1609(g)(3), redesignated par. (5) as (3) and substituted "paragraph (1)" for "paragraphs (1) and (2)", and struck out former par. (3) which read as follows:

"(3) RATE OF TAX.—The rate of tax imposed by paragraph (2) on any gasoline is 1 cent per gallon."

Subsec. (c)(4). Pub. L. 104-188, §1609(g)(3)(A), redesignated par. (4) as (2).

Subsec. (c)(5). Pub. L. 104-188, §1609(g)(3)(A), redesignated par. (5) as (3).

Pub. L. 104-188, §1609(a)(3), inserted "and", and during the period beginning on the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996" after "December 31, 1995".

Subsec. (k)(1)(A) to (C). Pub. L. 104-188, §1609(g)(4)(A), inserted "and" at end of subpar. (A), substituted period for "and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "no tax shall be imposed by subsection (c)(2)."

1993—Subsec. (a)(1). Pub. L. 103-66, §13242(d)(3), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "There is hereby imposed a tax on any liquid (other than any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or diesel-powered boat for use as a fuel in such vehicle or boat, or

"(B) used by any person as a fuel in a diesel-powered highway vehicle or diesel-powered boat unless there was a taxable sale of such liquid under subparagraph (A).

The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use. No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

Pub. L. 103-66, §13163(a)(2), substituted "diesel-powered highway vehicle or diesel-powered boat" for "diesel-powered highway vehicle" in subpars. (A) and (B) and "such vehicle or boat" for "such vehicle" in subpar. (A).

Subsec. (a)(2). Pub. L. 103-66, §13242(d)(4), in introductory provisions, struck out "or paragraph (1) of this subsection" after "section 4081" and, in closing provisions, substituted "The rate of the tax imposed by this

paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on gasoline which is in effect at the time of such sale or use.” for “The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use.”

Subsec. (a)(3). Pub. L. 103-66, §13241(e)(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103-66, §13242(d)(5)(A), substituted “paragraph (1)(B), (2)(B), or (3)(A)(ii)” for “paragraph (1)(B) or (2)(B)” and inserted before period at end “(if any)”.

Subsec. (b)(1)(C). Pub. L. 103-66, §13242(d)(5)(B), inserted before period at end “; except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train”.

Subsec. (b)(2)(A)(i). Pub. L. 103-66, §13242(d)(5)(C), struck out “Highway Trust Fund financing” before “rate applicable”.

Subsec. (c)(1). Pub. L. 103-66, §13242(d)(6), substituted “The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4091(b)(1) which is in effect at the time of such sale or use.” for “The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use.” in concluding provisions.

Pub. L. 103-66, §13241(b)(2)(B)(iii), struck out “of 17.5 cents per gallon” before “upon any liquid” in introductory provisions and inserted “The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use.” before last sentence in concluding provisions.

Subsec. (c)(2). Pub. L. 103-66, §13242(d)(7), substituted “gasoline (as defined in section 4083)” for “any product taxable under section 4081”.

Subsec. (c)(3). Pub. L. 103-66, §13241(b)(2)(A), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “The rate of tax imposed by paragraph (2) on any gasoline is the excess of 15 cents a gallon over the sum of the Highway Trust Fund financing rate plus the deficit reduction rate at which tax was imposed on such gasoline under section 4081.”

Subsec. (c)(5). Pub. L. 103-66, §13242(d)(8), inserted at end “The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon.”

Subsec. (d)(1). Pub. L. 103-66, §13241(e)(2), substituted “subsection (a)(1) or (2)” for “subsection (a)” before “on such sale or use”.

Subsec. (d)(2). Pub. L. 103-66, §13242(d)(9), (10), redesignated par. (3) as (2), substituted “(other than gasoline (as defined in section 4083))” for “(other than any product taxable under section 4081)”, and struck out heading and text of former par. (2). Text read as follows: “There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

“(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

“(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.”

Subsec. (d)(3), (4). Pub. L. 103-66, §13242(d)(9), redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (f)(3). Pub. L. 103-66, §13241(f)(1), struck out heading and text of par. (3). Text read as follows: “Except with respect to the taxes imposed by subsection (d), paragraph (1) shall not apply on and after October 1, 1999.”

Subsec. (g). Pub. L. 103-66, §13241(f)(2), struck out at end “Except with respect to the taxes imposed by sub-

section (d), paragraphs (2) and (4) shall not apply on and after October 1, 1999.”

Subsec. (k)(1)(A). Pub. L. 103-66, §13242(d)(11), struck out “Highway Trust Fund financing” before “rates under paragraphs” and substituted “section 4081(c)” for “sections 4081(c) and 4091(c), as the case may be”.

Subsec. (k)(1)(B). Pub. L. 103-66, §13242(d)(12), substituted “4091(c)” for “4091(d)”.

Subsec. (m)(1)(A). Pub. L. 103-66, §13242(d)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “under subsection (a)(2)—

“(i) the Highway Trust Fund financing rate shall be 5.75 cents per gallon, and

“(ii) the deficit reduction rate shall be 5.55 cents per gallon.”

Pub. L. 103-66, §13241(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “under subsection (a)(2) the Highway Trust Fund financing rate shall be 5.75 cents per gallon and the deficit reduction rate shall be 1.25 cents per gallon, and”.

Subsec. (m)(1)(B). Pub. L. 103-66, §13242(d)(13), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d)(1).”

1991—Subsecs. (f)(3), (g). Pub. L. 102-240 substituted “1999” for “1995”.

1990—Subsec. (a)(1). Pub. L. 101-508, §11211(b)(6)(C)(i), struck out “of 15 cents a gallon” after “imposed a tax” in introductory provisions and inserted before last sentence “The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use.”

Subsec. (a)(2). Pub. L. 101-508, §11211(b)(3), substituted “imposed a tax” for “imposed a tax of 9 cents a gallon” in introductory provisions and inserted at end “The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use.”

Subsec. (a)(3). Pub. L. 101-508, §11211(b)(6)(C)(ii), struck out par. (3) which provided that on and after Oct. 1, 1993, the taxes imposed by subsec. (a) shall not apply.

Subsec. (b)(2)(A)(i). Pub. L. 101-508, §11211(b)(6)(D), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “subsection (a)(2) shall be applied by substituting ‘3 cents’ for ‘9 cents’, and”.

Subsec. (b)(2)(C). Pub. L. 101-508, §11211(e)(1), substituted “2000” for “1993”.

Subsec. (c)(1). Pub. L. 101-508, §11213(b)(2)(A), substituted “17.5 cents” for “14 cents”.

Subsec. (c)(3). Pub. L. 101-508, §11211(a)(4), substituted “15 cents” for “12 cents” and “the sum of the Highway Trust Fund financing rate plus the deficit reduction rate” for “the Highway Trust Fund financing rate”.

Subsec. (c)(5). Pub. L. 101-508, §11213(d)(2)(B), substituted “1995” for “1990”.

Subsec. (c)(6). Pub. L. 101-508, §11213(e)(3), struck out par. (6) which provided cross reference to section 4283 for reduction of rates of taxes imposed by subsec. (c)(1) and (2) in certain circumstances.

Subsecs. (f)(3), (g). Pub. L. 101-508, §11211(d)(1), (2), substituted “1995” for “1993”.

Subsec. (k)(1)(A). Pub. L. 101-508, §11211(b)(6)(E)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “subsection (a)(1) shall be applied by substituting ‘9 cents’ for ‘15 cents’, and”.

Subsec. (k)(1)(B). Pub. L. 101-508, §11213(b)(2)(B)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “no tax shall be imposed by subsection (c)(1), and”.

Pub. L. 101-508, §11211(b)(6)(E)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “subsection (a)(2) shall be applied by substituting ‘3 cents’ for ‘9 cents’, and”.

Subsec. (k)(1)(C). Pub. L. 101-508, §11211(b)(6)(E)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “no tax shall be imposed by subsection (c).”

Subsec. (k)(3). Pub. L. 101-508, §11211(e)(2), substituted “2000” for “1993”.

Subsec. (m)(1)(A). Pub. L. 101-508, §11211(b)(6)(F), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “subsection (a)(2) shall be applied by substituting ‘4½ cents’ for ‘9 cents’, and”.

Subsec. (m)(1)(B). Pub. L. 101-508, §11213(b)(2)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “no tax shall be imposed by subsection (c).”

1988—Subsec. (b)(1)(A). Pub. L. 100-647, §2001(d)(3)(A), inserted reference to subsection (d)(1).

Subsec. (b)(1)(B). Pub. L. 100-647, §2001(d)(3)(B), inserted “and by the corresponding provision of subsection (d)(1)” before the period.

Subsec. (b)(1)(C). Pub. L. 100-647, §1017(c)(3), substituted “section 6421(e)(2)” for “section 6421(d)(2)”.

Subsec. (b)(2)(A). Pub. L. 100-647, §2001(d)(3)(D), amended subpar. (A) generally, inserting “(i)” before “subsection (a)(2)” and adding cl. (ii).

Subsec. (b)(3). Pub. L. 100-647, §2001(d)(3)(C), struck out par. (3) which coordinated subsec. (b) with taxes imposed by subsec. (d).

Subsec. (c)(3). Pub. L. 100-647, §2001(d)(2), substituted “the Highway Trust Fund financing rate at which” for “the rate at which”.

Subsec. (f)(3). Pub. L. 100-647, §1017(c)(4), amended par. (3) generally, substituting “paragraph (1) shall not apply on and after October 1, 1993” for “on and after October 1, 1993, paragraph (1) shall not apply”.

1987—Subsec. (a)(1). Pub. L. 100-203, §10502(b)(1), in heading substituted “Tax on diesel fuel where no tax imposed on fuel under section 4091” for “Diesel fuel” and in text inserted sentence at end that no tax be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

Subsec. (a)(3). Pub. L. 100-17, §502(a)(1), substituted “1993” for “1988”.

Subsec. (b)(2)(C). Pub. L. 100-17, §502(b)(1), substituted “1993” for “1988”.

Subsec. (c)(1). Pub. L. 100-203, §10502(b)(2), in heading substituted “Tax on nongasoline fuels where no tax imposed on fuel under section 4091” for “In general” and in text inserted sentence at end that no tax be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

Subsec. (c)(5). Pub. L. 100-223, §402(b), substituted “1990” for “1987”.

Subsec. (c)(6). Pub. L. 100-223, §405(b)(3), added par. (6).

Subsec. (d)(1). Pub. L. 100-203, §10502(b)(3), added par. (1), substituting new heading for “Liquids other than gasoline, etc., used in motor vehicles, motorboats, or trains”, and struck out text of former par. (1) which read as follows: “In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

“(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

“(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).”

Subsec. (d)(2). Pub. L. 100-203, §10502(b)(3), added par. (2), substituting new heading for “Liquids used in aviation”, and struck out text of former par. (2) which read as follows: “In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

“(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

“(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).”

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.”

Subsec. (d)(3), (4). Pub. L. 100-203, §10502(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (f)(3), (g). Pub. L. 100-17, §502(b)(2), (3), substituted “1993” for “1988”.

Subsec. (k)(3). Pub. L. 100-17, §502(c)(1), substituted “September 30, 1993” for “December 31, 1992”.

Subsec. (l). Pub. L. 100-223, §404(b), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: “No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter for the purpose of—

“(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

“(2) the planting, cultivation, cutting or transportation of, or caring for, trees (including logging operation),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to the Airport and Airway Improvement Act of 1982 during such use.”

Subsec. (n). Pub. L. 100-203, §10502(b)(4), struck out subsec. (n) which related to tax on diesel fuel for highway vehicle use being imposed on sale to retailer.

1986—Subsec. (b). Pub. L. 99-514, §422(a)(2), substituted “reduction in tax” for “exemption” in heading.

Subsec. (b)(2)(A). Pub. L. 99-514, §422(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “No tax shall be imposed by subsection (a) on any qualified methanol or ethanol fuel.”

Subsec. (b)(3). Pub. L. 99-499, §521(d)(1), added par. (3).

Subsecs. (d), (e). Pub. L. 99-499, §521(a)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f)(3). Pub. L. 99-499, §521(d)(2), substituted “Except with respect to the taxes imposed by subsection (d), on and after” for “On and after”.

Subsec. (g). Pub. L. 99-499, §521(d)(3), substituted “Except with respect to the taxes imposed by subsection (d), paragraphs” for “Paragraphs” in last sentence.

Subsec. (l)(1). Pub. L. 99-514, §1879(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“transporting individuals, equipment, or supplies in—

“(A) the exploration for, or the development or removal of, hard minerals, or

“(B) the exploration for oil or gas, or”.

Subsec. (n). Pub. L. 99-514, §1702(a), added subsec. (n).

1984—Subsec. (a)(1). Pub. L. 98-369, §911(a), substituted “15 cents” for “9 cents”.

Subsec. (k)(1). Pub. L. 98-369, §912(a), in amending par. (1) generally, substituted “liquid” for “liquid fuel” in provisions preceding subpar. (A), in subpar. (A), substituted “subsection (a)(1) shall be applied by substituting ‘9 cents’ for ‘15 cents’, and” for “subsection (a) shall be applied by substituting ‘4 cents’ for ‘9 cents’ each place it appears, and”, added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (l)(1). Pub. L. 98-369, §1018(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (m). Pub. L. 98-369, §913(a), added subsec. (m). 1983—Subsec. (a). Pub. L. 97-424, §§511(a)(2), 516(a)(1)(A), added subsec. (a), and struck out former subsec. (a) which provided for a tax of 4 cents a gallon on diesel fuel.

Subsec. (b). Pub. L. 97-424, §511(b)(1), (c)(2), added subsec. (b), and struck out former subsec. (b) which provided for a tax of 4 cents a gallon on special motor fuels.

Subsec. (c)(3). Pub. L. 97-424, §511(g)(1), substituted provision that the rate of tax imposed by par. (2) on any gasoline is the excess of 12 cents a gallon over the rate at which tax was imposed on such gasoline under section 4081 for provision that the rate of tax imposed by par. (2) was 8 cents a gallon (10½ cents a gallon in

the case of any gasoline with respect to which a tax was imposed under section 4081 at the rate set forth in subsec. (b) thereof).

Subsec. (e). Pub. L. 97-424, §516(a)(1)(B), struck out subsec. (e) which provided that the taxes imposed by subsecs. (a) and (b) would be 1½ cents a gallon and that second and third sentences of subsecs. (a) and (b) would not apply on and after Oct. 1, 1984.

Subsec. (f)(3). Pub. L. 97-424, §516(b)(1)(A), added par. (3).

Subsec. (g). Pub. L. 97-424, §516(b)(1)(B), inserted provision that pars. (2) and (4) shall not apply on and after Oct. 1, 1988.

Subsec. (k). Pub. L. 97-424, §511(d)(2), in par. (1) substituted provisions for a 4-cent tax on the sale or use of any liquid fuel at least 10 percent of which consists of alcohol for provisions that no tax be imposed by this section on the sale or use of such fuel, and in par. (2) substituted "to which paragraph (1) applied" for "on which tax was not imposed by reason of this subsection" after "alcohol" and inserted provision that any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

1982—Subsec. (c). Pub. L. 97-248, §279(a), in par. (1) substituted "14 cents" for "7 cents", in par. (3) substituted "8 cents a gallon (10½ cents a gallon in the case of any gasoline with respect to which a tax is imposed under section 4081 at the rate set forth in subsection (b) thereof)" for "3 cents a gallon", and in par. (5) substituted provisions that the taxes imposed by pars. (1) and (2) shall apply during the period beginning on Sept. 1, 1982, and ending on Dec. 31, 1987, for provisions that on and after Oct. 1, 1980, the taxes imposed by pars. (1) and (2) would not apply.

Subsec. (l). Pub. L. 97-248, §279(b)(1), added subsec. (l). 1980—Subsec. (c)(5). Pub. L. 96-298 extended termination date to "October 1, 1980" from "July 1, 1980".

Subsec. (k)(3). Pub. L. 96-223 added par. (3).

1978—Subsec. (b). Pub. L. 95-618, §§222(a)(2), 223(a)(3)(B), substituted "in a qualified business use" for "otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway" and "is used otherwise than in a qualified business use" for "is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway" and inserted provision that for purposes of this subsection "qualified business use" has the meaning given to such term by section 6421(d)(2).

Subsec. (c)(3). Pub. L. 95-599, §502(b), struck out termination date of Sept. 30, 1979 for 3 cents per gallon rate of tax and struck out provision for a 5½ cents per gallon rate of tax after such date.

Subsec. (e). Pub. L. 95-599, §502(a)(1), substituted "1984" for "1979".

Subsec. (h)(2). Pub. L. 95-600, §703(l)(1), substituted "term 'aircraft museum' means" for "term 'aircraft' means".

Subsecs. (i), (j). Pub. L. 95-600, §703(l)(2), redesignated subsec. (i), relating to sales by United States, or by any agency or instrumentality of United States, as (j).

Subsec. (k). Pub. L. 95-618, §221(b)(1), added subsec. (k).

1976—Subsec. (c)(3). Pub. L. 94-280, §303(a)(1), substituted "1979" for "1977" in two places.

Subsec. (e). Pub. L. 94-280, §303(a)(2), substituted "1979" for "1977".

Subsec. (f)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (g). Pub. L. 94-455, §§1904(a)(1)(B), 1906(b)(13)(A), designated existing provisions as par. (1), substituted "Other exemptions" for "Exemptions for use as supplies for vessels" after "(g)", struck out "or

his delegate" after "Secretary", and added pars. (2) to (4) and definition of "nonprofit educational organization".

Subsec. (h). Pub. L. 94-530 added subsec. (h). Former subsec. (h) redesignated "(i) Registration".

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

Subsec. (i). Pub. L. 94-455, §1904(a)(1)(C), added subsec. (i) relating to sales by United States.

Pub. L. 94-530 redesignated former subsec. (h) as "(i) Registration".

1970—Subsec. (b). Pub. L. 91-258, §202(b)(1) and (2), substituted "motor vehicle or motorboat" for "motor vehicle, motorboat, or airplane", twice in par. (1) and once in par. (2), and "in" for "for the propulsion of" in par. (1) preceding "such motor vehicle", in par. (2) preceding "a motor vehicle" and in text following par. (2) before "a highway vehicle (A)" in two places, respectively.

Subsec. (c). Pub. L. 91-258, §202(a), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (c)(3). Pub. L. 91-605, §303(a)(1), substituted "1977" for "1972" in two places.

Subsec. (d). Pub. L. 91-258, §202(a), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 91-605, §303(a)(2), substituted "1977" for "1972".

Pub. L. 91-258, §202(a), redesignated former subsec. (c) as (e), substituting in par. (1) "subsections (a) and (b)" and "," for "this section" and ":", Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91-258, §202(a), redesignated former subsec. (d) as (f), substituting in par. (1) prohibition against imposition of tax "under this section on any liquid sold for use or used on a farm for farming purposes" for prior provisions that "(A) no tax shall be imposed under subsection (a)(1) or (b)(1) on the sale of any liquid sold for use on a farm for farming purposes, and (B) no tax shall be imposed under subsection (a)(2) or (b)(2) on the use of any liquid used on a farm for farming purposes".

Subsec. (g). Pub. L. 91-258, §202(a), redesignated former subsec. (e) as (g), substituting "this section on any liquid sold" for "subsection (b) in the case of any fuel sold".

Subsec. (h). Pub. L. 91-258, §202(a), added subsec. (h). 1965—Subsec. (b). Pub. L. 89-44 inserted "casinghead and natural gasoline," after "liquefied petroleum gas," in text preceding par. (1).

1961—Subsec. (a). Pub. L. 87-61, §201(a), increased tax on diesel fuel from 3 to 4 cents a gallon, and substituted "a tax of 2 cents a gallon shall be imposed under paragraph (2)" for "a tax of 1 cent a gallon shall be imposed under paragraph (2)".

Subsec. (b). Pub. L. 87-61, §201(a), increased tax on special motor fuels from 3 to 4 cents a gallon, and substituted "a tax of 2 cents a gallon shall be imposed under paragraph (2)" for "a tax of 1 cent a gallon shall be imposed under paragraph (2)".

Subsec. (c). Pub. L. 87-61, §201(c), substituted "October 1, 1972" for "July 1, 1972".

Subsec. (f). Pub. L. 87-61, §201(d), repealed subsec. (f) which authorized a temporary increase in taxes under subsecs. (a) and (b).

1959—Subsecs. (a), (b). Pub. L. 86-342, §201(b)(2), struck out "in lieu of 3 cents a gallon" after "shall be 2 cents a gallon".

Subsec. (f). Pub. L. 86-342, §201(b)(1), added subsec. (f). 1958—Subsec. (e). Pub. L. 85-859 added subsec. (e).

1956—Subsec. (a). Act June 29, 1956, §202(a), increased tax on diesel fuel from 2 cents a gallon to 3 cents a gallon, and inserted provisions which retained tax at 2 cents a gallon for diesel fuel used in vehicles not registered, and not required to be registered, for highway use, or vehicles owned by the United States and not used on the highway.

Subsec. (b). Act June 29, 1956, §202(b), increased tax on special motor fuels from 2 cents a gallon to 3 cents a gallon, and inserted provisions which retained tax at 2 cents a gallon for special motor fuels sold for use or

used otherwise than as a fuel for the propulsion of a highway vehicle which is registered, or is required to be registered, for highway use, or vehicles owned by the United States used on the highway.

Subsec. (c). Act June 29, 1956, §202(c), substituted “July 1, 1972” for “April 1, 1956” and provided for non-application of second and third sentences of subsec. (a) and (b).

Act Mar. 29, 1956, substituted “April 1, 1957” for “April 1, 1956”.

Subsec. (d). Act Apr. 2, 1956, added subsec. (d).

1955—Subsec. (c). Act Mar. 30, 1955, substituted “April 1, 1956” for “April 1, 1955”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-94, div. C, title XXXI, §31102(f), Dec. 4, 2015, 129 Stat. 1728, provided that: “The amendments made by this section [amending this section and sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, and 9503 of this title and section 200310 of Title 54, National Park Service and Related Programs] shall take effect on October 1, 2016.”

Pub. L. 114-41, title II, §2008(d), July 31, 2015, 129 Stat. 460, provided that: “The amendments made by this section [amending this section] shall apply to any sale or use of fuel after December 31, 2015.”

#### EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Pub. L. 112-141, div. D, title I, §40102(f), July 6, 2012, 126 Stat. 845, provided that: “Except as otherwise provided in this section, the amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, and 9503 of this title, and former section 460/-11 of Title 16, Conservation] shall take effect on July 1, 2012.”

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Pub. L. 112-140, title IV, §402(f), June 29, 2012, 126 Stat. 403, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4482, 4483, 6412, and 9503 of this title, and former section 460/-11 of Title 16, Conservation] shall take effect on July 1, 2012.

“(2) TECHNICAL CORRECTION.—The amendment made by subsection (e) [amending section 4482 of this title] shall take effect as if included in section 402 of the Surface Transportation Extension Act of 2012 [Pub. L. 112-102].”

Pub. L. 112-102, title IV, §402(f), Mar. 30, 2012, 126 Stat. 283, provided that: “The amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, and 9503 of this title, and former section 460/-11 of Title 16, Conservation] shall take effect on April 1, 2012.”

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-30, title I, §142(f), Sept. 16, 2011, 125 Stat. 357, provided that: “The amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, and 9503 of this title, and former section 460/-11 of Title 16, Conservation] shall take effect on October 1, 2011.”

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendments by Pub. L. 110-172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendments relate, and amendment by section 6(d)(3) of Pub. L. 110-172 applicable to fuel sold for use or used after Dec. 29, 2007, see section 6(e) of Pub. L. 110-172, set out as a note under section 300C of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, §1207(g), Aug. 17, 2006, 120 Stat. 1072, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4221, 4253, 4483, 6416, 6421, and 7701 of this title] shall take effect on January 1, 2007.

“(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 4483 of this title] shall apply to taxable periods beginning on or after July 1, 2007.”

#### EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109-59, title XI, §11101(e), Aug. 10, 2005, 119 Stat. 1945, provided that: “The amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, 9503, and 9504 of this title, and section 460/-11 of Title 16, Conservation] shall take effect on the date of the enactment of this Act [Aug. 10, 2005].”

Pub. L. 109-59, title XI, §11113(d), Aug. 10, 2005, 119 Stat. 1949, provided that: “The amendments made by this section [amending this section and sections 4101, 6426, and 6427 of this title] shall apply to any sale or use for any period after September 30, 2006.”

Amendment by section 11151(e)(2) of Pub. L. 109-59 effective as if included in the provision of the Energy Tax Incentives Act of 2005, Pub. L. 109-58, title XIII, to which such amendment relates, see section 11151(f)(3) of Pub. L. 109-59, set out as a note under section 38 of this title.

Pub. L. 109-59, title XI, §11161(e), Aug. 10, 2005, 119 Stat. 1973, provided that: “The amendments made by this section [amending this section and sections 4081, 4082, 6427, 9502, and 9503 of this title] shall apply to fuels or liquids removed, entered, or sold after September 30, 2005.”

Pub. L. 109-58, title XIII, §1362(d), Aug. 8, 2005, 119 Stat. 1060, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6430 of this title and amending this section and sections 4081, 4082, and 9508 of this title] shall take effect on October 1, 2005.

“(2) NO EXEMPTION.—The amendments made by subsection (b) [enacting section 6430 of this title and amending this section and section 4082 of this title] shall apply to fuel entered, removed, or sold after September 30, 2005.”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title II, §241(c), Oct. 22, 2004, 118 Stat. 1438, provided that: “The amendments made by this section [amending this section and sections 4042, 4082, 6421, and 6427 of this title] shall take effect on January 1, 2005.”

Amendment by section 301(c)(5), (6) of Pub. L. 108-357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108-357, set out as a note under section 40 of this title.

Pub. L. 108-357, title VIII, §853(e), Oct. 22, 2004, 118 Stat. 1614, provided that: “The amendments made by this section [amending this section and sections 4081 to 4083, 4101, 4103, 4221, 6206, 6416, 6427, 6724, 9502, and 9508 of this title, redesignating subpart C of part III of subchapter A of chapter 32 of this title as subpart B of part III of subchapter A of chapter 32 of this title, and repealing former subpart B of part III of subchapter A of chapter 32 of this title] shall apply to aviation-grade kerosene removed, entered, or sold after December 31, 2004.”

#### EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

Amendment by section 9003(b)(2)(A) of Pub. L. 105-178 effective Jan. 1, 2001, see section 9003(b)(3) of Pub. L. 105-178, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105-34, title IX, §902(c), Aug. 5, 1997, 111 Stat. 873, provided that: “The amendments made by this sec-

tion [amending this section and sections 4083 and 6421 of this title] shall take effect on January 1, 1998.”

Pub. L. 105-34, title IX, § 907(c), Aug. 5, 1997, 111 Stat. 876, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1997.”

Pub. L. 105-34, title X, § 1031(e)(1), Aug. 5, 1997, 111 Stat. 932, provided that: “The amendments made by subsection (a) [amending this section and sections 4081 and 4091 of this title] shall apply take effect [sic] on October 1, 1997.”

Pub. L. 105-34, title X, § 1032(f), Aug. 5, 1997, 111 Stat. 935, as amended by Pub. L. 105-178, title IX, § 9008, June 9, 1998, 112 Stat. 506; Pub. L. 106-170, title V, § 524, Dec. 17, 1999, 113 Stat. 1928, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 4081 to 4083, 4093, 4101, 6416, 6427, 6715, 7232, 9503, and 9508 of this title] shall take effect on July 1, 1998.

“(2) The amendment made by subsection (d) [amending section 4101 of this title] shall take effect on January 1, 2002.”

Pub. L. 105-34, title XIV, § 1435(c)(2), Aug. 5, 1997, 111 Stat. 1053, provided that: “The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1997.”

Amendment by section 1601(f)(4)(A), (B) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

Pub. L. 105-2, § 2(e)(1), Feb. 28, 1997, 111 Stat. 7, provided that: “The amendments made by subsection (a) [amending this section and sections 4081 and 4091 of this title] shall apply to periods beginning on or after the 7th day after the date of the enactment of this Act [Feb. 28, 1997].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title XVI, § 1609(i), Aug. 20, 1996, 110 Stat. 1844, provided that: “The amendments made by this section [amending this section and sections 4081, 4091, 4261, 4271, 4282, 6421, and 9502 of this title] shall take effect on the 7th calendar day after the date of the enactment of this Act [Aug. 20, 1996], except that the amendments made by subsection (b) [amending sections 4261 and 4271 of this title] shall not apply to any amount paid before such date.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, § 13163(d), Aug. 10, 1993, 107 Stat. 454, provided that: “The amendments made by this section [amending this section and sections 4092, 6421, and 9508 of this title] shall take effect on January 1, 1994.”

Pub. L. 103-66, title XIII, § 13241(g), Aug. 10, 1993, 107 Stat. 512, provided that: “The amendments made by this section [amending this section and sections 4042, 4081, 4091, 4093, 6420, 6421, and 6427 of this title] shall take effect on October 1, 1993.”

Pub. L. 103-66, title XIII, § 13242(e), Aug. 10, 1993, 107 Stat. 528, provided that: “The amendments made by this section [enacting sections 4084 and 6714 of this title and amending this section and sections 4081 to 4083, 4091 to 4093, 4101 to 4103, 6206, 6302, 6412, 6416, 6420, 6421, 6427, 9502, 9503, and 9508 of this title] shall take effect on January 1, 1994.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, § 11211(a)(6), Nov. 5, 1990, 104 Stat. 1388-424, provided that: “Except as otherwise provided in this subsection, the amendments made by this subsection [amending this section and sections 4081 and 9503 of this title] shall apply to gasoline removed (as defined in [former] section 4082 of the Internal Revenue Code of 1986) after November 30, 1990.”

Pub. L. 101-508, title XI, § 11211(b)(7), Nov. 5, 1990, 104 Stat. 1388-426, provided that: “The amendments made by this subsection [amending this section and sections

4091, 4093, 6427, 9502, and 9503 of this title] shall take effect on December 1, 1990.”

Pub. L. 101-508, title XI, § 11213(b)(4), Nov. 5, 1990, 104 Stat. 1388-434, provided that: “The amendments made by this subsection [amending this section and sections 4091 and 6427 of this title] shall take effect on December 1, 1990.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(3), (4) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(2), (3)(A)–(D) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99-499, title V, to which it relates, see section 2001(e) of Pub. L. 100-647, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100-647, title II, § 2001(d)(1)(A), Nov. 10, 1988, 102 Stat. 3594, provided that: “The amendments made by subsections (b)(3) and (d)(17) of section 10502 of the Revenue Act of 1987 [Pub. L. 100-203, amending this section and section 9508 of this title] shall be treated as if included in the amendments made by section 521 of the Superfund Revenue Act of 1986 [Pub. L. 99-499] except that the last sentence of [former] paragraphs (2) and (3) of section 4041(d) of the Internal Revenue Code of 1986 (as amended by such subsection (b)(3)) and the reference to section 4091 of such Code in section 9508(c)(2)(A) of such Code (as amended by such subsection (d)(1) [(d)(17)]) shall not apply to sales before April 1, 1988.”

Pub. L. 100-223, title IV, § 404(d)(2), Dec. 30, 1987, 101 Stat. 1533, provided that: “The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1988.”

Amendment by Pub. L. 100-203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100-203, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-514, title IV, § 422(a)(3), Oct. 22, 1986, 100 Stat. 2230, provided that: “The amendments made by this subsection [amending this section] shall take effect on January 1, 1987.”

Pub. L. 99-514, title XVII, § 1702(c), Oct. 22, 1986, 100 Stat. 2774, provided that: “The amendments made by this section [amending this section and section 6652 of this title] shall apply to sales after the first calendar quarter beginning more than 60 days after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1878(c)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Pub. L. 99-499, title V, § 521(e), Oct. 17, 1986, 100 Stat. 1780, provided that: “The amendments made by this section [amending this section and sections 4042, 4081, 4221, 6416, 6420, 6421, 6427, 9502, 9503, and 9506 of this title] shall take effect on January 1, 1987.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(a) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

Amendment by section 912(a) of Pub. L. 98-369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98-369, set out as a note under section 40 of this title.

Pub. L. 98-369, div. A, title IX, § 913(c), July 18, 1984, 98 Stat. 1008, provided that: “The amendments made by this section [amending this section and section 40 of this title] shall take effect on August 1, 1984.”



Pub. L. 98-369, div. A, title X, §1018(c)(1), July 18, 1984, 98 Stat. 1022, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1984."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-424, title V, §511(h), Jan. 6, 1983, 96 Stat. 2173, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 44E, 4081, 6416, 6420, 6421, and 6427 of this title] shall take effect on April 1, 1983.

"(2) TARIFF ON IMPORTED ALCOHOL.—The amendment made by subsection (d)(5) [amending item 901.50 of the Tariff Schedules, which are not set out in the Code] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after March 31, 1983.

"(3) FOR SUBSECTION (e)(2).—The amendment made by subsection (e)(2) [amending section 6427 of this title] shall take effect on January 1, 1983.

"(4) SHARED TRANSPORTATION REQUIREMENT.—The amendment made by subsection (e)(3) [amending section 6427 of this title] shall apply with respect to fuel purchased after December 31, 1982, and before January 1, 1984."

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §279(c), Sept. 3, 1982, 96 Stat. 564, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall take effect on September 1, 1982."

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Pub. L. 95-618, title II, §221(b)(2), Nov. 9, 1978, 92 Stat. 3185, as amended by Pub. L. 96-223, title II, §232(a)(3), Apr. 2, 1980, 94 Stat. 273, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales or use after December 31, 1978."

Pub. L. 95-618, title II, §222(b), Nov. 9, 1978, 92 Stat. 3187, provided that: "The amendments made by subsection (a) [amending this section and sections 6421 and 6424 of this title] shall apply with respect to uses after December 31, 1978."

Amendment by section 233(a)(3)(B) of Pub. L. 95-618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as a note under section 34 of this title.

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94-530, §1(d), Oct. 17, 1976, 90 Stat. 2488, provided that: "The amendments made by this section [amending this section and sections 39, 6427, 7210, 7603, 7604, and 7605 of this title] shall take effect on October 1, 1976."

Pub. L. 94-455, title XIX, §1904(d), Oct. 4, 1976, 90 Stat. 1818, provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 263, 861, 1232, 4042, 4216, 4217, 4227, 4253, 4261, 4271, 4371 to 4374, 4482, 4493, 4901, 4905, 4973, 6011, 6416, 6611, 6651, 6808, 7012, 7234, 7240, 7265, 7270, 7272, 7303, 7611, and 7655 of this title and repealing sections 4042, 4054 to 4058, 4226, 4292, 4294, 4295, 4591 to 4597, 4801 to 4806, 4811 to 4826, 4881 to 4886, 4911 to 4931, 6076, 6680, 6681, 6689, 7235, 7239, 7241, 7264, 7267, 7274, and 7328 of this title] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976]."

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-258, title II, §211, May 21, 1970, 84 Stat. 253, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this title [see

Short Title of 1970 Amendment note below] shall take effect on July 1, 1970.

"(b) EXCEPTIONS.—The amendments made by sections 203 [enacting section 7275 and amending sections 4261 and 4262 of this title] and 204 [enacting sections 4271 and 4272 of this title] shall apply to transportation beginning after June 30, 1970. The amendments made by subsections (a), (b), and (c) of section 207 [enacting section 6427 and amending sections 39, 6420, 6421, and 6424] shall apply with respect to taxable years ending after June 30, 1970."

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, §802(d)(2), June 21, 1965, 79 Stat. 159, provided that: "The amendment made by subsection (a)(2) [amending this section] shall apply with respect to casinghead and natural gasoline sold or used on or after July 1, 1965, except that such amendment shall not apply to a sale or use of casinghead or natural gasoline which was sold by a producer or importer before such date if tax under section 4081 of the Code (as in effect prior to the amendment made by subsection (a)(1) [amending section 4082 of this title]) was imposed with respect to such sale."

#### EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-61, title II, §208, June 29, 1961, 75 Stat. 128, provided that:

"(a) Except as provided in subsection (b), the amendments made by this title [enacting section 6156 of this title, amending this section and sections 4061, 4071, 4081, 4218, 4221, 4226, 4481, 4482, 6412, 6416, 6421, and 6601 of this title, and amending section 209 of The Highway Revenue Act of 1956, set out as a note under section 120 of Title 23, Highways] shall take effect on the date of the enactment of this Act [June 29, 1961].

"(b)(1) The amendments made by sections 201, 202, and 203 [enacting section 6156 of this title and amending this section and sections 4071, 4081, 4481, 4482, 6421, and 6601 of this title] shall take effect on July 1, 1961.

"(2) The amendments made by section 205(a), (c), and (d) [amending sections 4221 and 6416 of this title] shall apply only in the case of gasoline sold on or after October 1, 1961.

"(3) The amendment made by section 205(b) [amending section 4218 of this title] shall apply only in the case of gasoline used on or after October 1, 1961."

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see Pub. L. 85-859, §1(c), Sept. 2, 1958, 72 Stat. 1275.

#### EFFECTIVE DATE OF 1956 AMENDMENTS

Act June 29, 1956, ch. 462, title II, §211, 70 Stat. 402, provided that: "This title [enacting sections 173 and 174 of Title 23, Highways, and sections 4426, 4481 to 4484 of this title, amending this section and sections 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of this title, and renumbering sections 4227 and 6422 of this title] shall take effect on the date of its enactment [June 29, 1956], except that the amendments made by sections 202, 203, 204, and 205 [amending this section and sections 4061, 4071, 4072, 4073, and 4081 of this title] shall take effect on July 1, 1956."

Act Apr. 2, 1956, ch. 160, §2(a)(2), 70 Stat. 89, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the date of the enactment of this Act [Apr. 2, 1956]."

#### SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-258, title II, §201(a), May 21, 1970, 84 Stat. 236, provided that: "This title [enacting sections 4271, 4272, 4281, 4282, 4491 to 4494, 6426, 6427, and 7275 of this title and section 1742 of former Title 49, Transportation, amending this section and sections 39, 874, 4082, 4261, 4262, 4291 to 4294, 6156, 6201, 6206, 6401, 6415, 6416, 6420, 6421, 6424, 6675, 7210, and 7603 to 7605 of this title,

repealing former section 4263 of this title, enacting provisions set out as notes under section 104 of Title 4, Flag and Seal, Seat of Government, and the States, and section 1742 of former Title 49, and amending provision set out as a note under section 120 of Title 23, Highways] may be cited as the ‘Airport and Airway Revenue Act of 1970’.”

#### SHORT TITLE OF 1956 AMENDMENTS

Act June 29, 1956, ch. 462, title II, §201(a), 70 Stat. 387, provided that: “This title [enacting sections 173 and 174 of Title 23, Highways, and sections 4426, 4481 to 4484 of this title, amending this section and sections 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of this title, and renumbering sections 4227 and 6422 of this title] may be cited as the ‘Highway Revenue Act of 1956’.”

Act Mar. 29, 1956, ch. 115, §1, 70 Stat. 66, provided: “That this Act [amending this section and sections 11, 821, 4061, 4081, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5701 note, 5707, and 6412 of this title] may be cited as the ‘Tax Rate Extension Act of 1956’.”

#### SHORT TITLE OF 1955 AMENDMENT

Act Mar. 30, 1955, ch. 18, §1, 69 Stat. 14, provided: “That this Act [amending this section and sections 11, 821, 4061, 4081, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5701 note, 5707, and 6412 of this title] may be cited as the ‘Tax Rate Extension Act of 1955’.”

#### DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Due date for deposit of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 901(e) of Pub. L. 105-34, set out as a note under section 6302 of this title.

#### FLOOR STOCKS TAXES

Pub. L. 101-508, title XI, §11213(b)(5), Nov. 5, 1990, 104 Stat. 1388-434, imposed a floor stocks tax on aviation fuel on which tax was imposed under section 4041(c)(1) or 4091 of this title before Dec. 1, 1990, and which was held on such date by any person.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### STUDY BY SECRETARY OF THE TREASURY; REPORT TO CONGRESS

Pub. L. 96-451, title II, §204, Oct. 14, 1980, 94 Stat. 1988, directed Secretary of the Treasury, after consultation with Secretary of department in which Coast Guard was operating, to conduct a study to determine portion of taxes imposed by sections 4041(b) and 4081 of the Internal Revenue Code of 1954 which were attributable to fuel used in recreational motorboats, and to report to Congress on his findings under such study, not later than 2 years after Oct. 14, 1980.

#### STUDY OF IMPORTED ALCOHOL BY SECRETARY OF THE TREASURY

Pub. L. 96-223, title II, §232(f), Apr. 2, 1980, 94 Stat. 280, required, within 180 days after Apr. 2, 1980, Secretary of the Treasury to furnish specific congressional committees recommendations for limiting import of alcohol into United States for fuel purposes.

#### REPORTS ON USE OF ALCOHOL IN FUEL

Pub. L. 95-618, title II, §221(c), Nov. 9, 1978, 92 Stat. 3185, as amended by Pub. L. 96-223, §232(g), Apr. 2, 1980,

94 Stat. 280; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “On April 1 of each year, beginning with April 1, 1981, and ending with April 1, 1992, the Secretary of Energy, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit to the Congress a report on the use of alcohol in fuel. The report shall include—

“(1) a description of the firms engaged in the alcohol fuel industry,

“(2) the amount of alcohol fuel sold in each State, and the amount of gasoline saved in each State by reason of the use of alcohol fuels,

“(3) the revenue loss resulting from the exemptions from tax for alcohol fuels under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the credit allowable under section 44E [now 40] of such Code and the impact of such revenue loss on the Highway Trust Fund, and

“(4) the cost of production and the retail cost of alcohol fuels as compared to gasoline and special fuels not mixed with alcohol.”

### § 4042. Tax on fuel used in commercial transportation on inland waterways

#### (a) In general

There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation.

#### (b) Amount of tax

##### (1) In general

The rate of the tax imposed by subsection (a) is the sum of—

(A) the Inland Waterways Trust Fund financing rate,

(B) the Leaking Underground Storage Tank Trust Fund financing rate, and

(C) the deficit reduction rate.

##### (2) Rates

For purposes of paragraph (1)—

(A) The Inland Waterways Trust Fund financing rate is 29 cents per gallon.

(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

(C) The deficit reduction rate is—

(i) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

(ii) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

(iii) 0 after December 31, 2006.

#### (3) Exception for fuel on which Leaking Underground Storage Tank Trust Fund financing rate separately imposed

The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax was imposed with respect to such fuel under section 4041(d) or 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

#### (4) Termination of Leaking Underground Storage Tank Trust Fund financing rate

The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

**(c) Exemptions****(1) Deep-draft ocean-going vessels**

The tax imposed by subsection (a) shall not apply with respect to any vessel designed primarily for use on the high seas which has a draft of more than 12 feet.

**(2) Passenger vessels**

The tax imposed by subsection (a) shall not apply with respect to any vessel used primarily for the transportation of persons.

**(3) Use by State or local government in transporting property in a state or local business**

Subparagraph (B) of subsection (d)(1) shall not apply with respect to use by a State or political subdivision thereof.

**(4) Use in moving lash and seabee ocean-going barges**

The tax imposed by subsection (a) shall not apply with respect to use for movement by tug of exclusively LASH (Lighter-aboard-ship) and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

**(d) Definitions**

For purposes of this section—

**(1) Commercial waterway transportation**

The term “commercial waterway transportation” means any use of a vessel on any inland or intracoastal waterway of the United States—

(A) in the business of transporting property for compensation or hire, or

(B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

**(2) Inland or intracoastal waterway of the United States**

The term “inland or intracoastal waterway of the United States” means any inland or intracoastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978.

**(3) Person**

The term “person” includes the United States, a State, a political subdivision of a State, or any agency or instrumentality of any of the foregoing.

**(e) Date for filing return**

The date for filing the return of the tax imposed by this section for any calendar quarter shall be the last day of the first month following such quarter.

(Added Pub. L. 95-502, title II, §202(a), Oct. 21, 1978, 92 Stat. 1696; amended Pub. L. 99-499, title V, §521(a)(3), Oct. 17, 1986, 100 Stat. 1777; Pub. L. 99-662, title XIV, §1404(a), Nov. 17, 1986, 100 Stat. 4270; Pub. L. 100-647, title II, §2002(a)(2), Nov. 10, 1988, 102 Stat. 3597; Pub. L. 103-66, title XIII, §13241(d), Aug. 10, 1993, 107 Stat. 510; Pub. L. 108-357, title II, §241(b), Oct. 22, 2004, 118 Stat. 1438; Pub. L. 110-172, §6(d)(1)(B), Dec. 29, 2007, 121 Stat. 2480; Pub. L. 113-295, div. B, title II, §205(a), Dec. 19, 2014, 128 Stat. 4065.)

## REFERENCES IN TEXT

Section 206 of the Inland Waterways Revenue Act of 1978, referred to in subsec. (d)(2), is section 206 of Pub. L. 95-502, title II, Oct. 21, 1978, 92 Stat. 1700, which is classified to section 1804 of Title 33, Navigation and Navigable Waters.

## PRIOR PROVISIONS

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, provided a cross reference to section 4222 of this title for exemption from tax where special motor fuels are sold for use for certain vessels, prior to repeal by Pub. L. 94-455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

## AMENDMENTS

2014—Subsec. (b)(2)(A). Pub. L. 113-295 amended subpar. (A) generally, substituting “The Inland Waterways Trust Fund financing rate is 29 cents per gallon.” for “The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:” and accompanying table of rates.

2007—Subsec. (b)(3). Pub. L. 110-172 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.”

2004—Subsec. (b)(2)(C). Pub. L. 108-357 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “The deficit reduction rate is 4.3 cents per gallon.”

1993—Subsec. (b)(1)(C). Pub. L. 103-66, §13241(d)(1), added subpar. (C).

Subsec. (b)(2)(C). Pub. L. 103-66, §13241(d)(2), added subpar. (C).

1988—Subsec. (b)(2). Pub. L. 100-647 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For purposes of paragraph (1)—

“(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

“(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.”

1986—Subsec. (b). Pub. L. 99-499 and Pub. L. 99-662 both amended subsec. (b) generally, effective Jan. 1, 1987. Pub. L. 100-647, §2002(a)(1) (see Construction of 1986 Amendments note below), provided that for purposes of this section, the amendment made by Pub. L. 99-499 be treated as enacted after the amendment made by Pub. L. 99-662. Prior to amendment by Pub. L. 99-499 and Pub. L. 99-662, subsec. (b) read as follows:

**“If the use occurs—****The tax is—**

After September 30, 1980 and before October 1, 1981 .....	4 cents a gallon
After September 30, 1981 and before October 1, 1983 .....	6 cents a gallon
After September 30, 1983 and before October 1, 1985 .....	8 cents a gallon
After September 30, 1985 .....	10 cents a gallon”.

## EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. B, title II, §205(b), Dec. 19, 2014, 128 Stat. 4065, provided that: “The amendment made by this section [amending this section] shall apply to fuel used after March 31, 2015.”

## EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendment relates, see section 6(e) of Pub. L. 110-172, set out as a note under section 30C of this title.

## EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108-357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103-66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title II, §2002(d), Nov. 10, 1988, 102 Stat. 3597, as amended by Pub. L. 101-239, title VII, §7812(b), Dec. 19, 1989, 103 Stat. 2412, provided that: “The amendments made by subsections (b) and (c) [amending section 4462 of this title and provisions set out as a note under section 4461 of this title] shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99-662, title XIV] to which it relates, and the amendment made by subsection (a)(2) [amending this section] shall take effect as if included in the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 [Pub. L. 99-499, title V].”

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-662, title XIV, §1404(c), Nov. 17, 1986, 100 Stat. 4271, provided that: “The amendments made by this section [amending this section and section 1804 of Title 33, Navigation and Navigable Waters] shall take effect on January 1, 1987.”

Amendment by Pub. L. 99-499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99-499, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Pub. L. 95-502, title II, §202(d), Oct. 21, 1978, 92 Stat. 1697, provided that: “The amendments made by this section [enacting this section and amending section 4293 of this title] shall take effect on October 1, 1980.”

CONSTRUCTION OF 1986 AMENDMENTS

Pub. L. 100-647, title II, §2002(a)(1), Nov. 10, 1988, 102 Stat. 3597, provided that: “For purposes of section 4042 of the 1986 Code, the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 [Pub. L. 99-499, amending this section] shall be treated as enacted after the amendment made by section 1404(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99-662, amending this section].”

**§ 4043. Surtax on fuel used in aircraft part of a fractional ownership program**

**(a) In general**

There is hereby imposed a tax on any liquid used (during any calendar quarter by any person) in a fractional program aircraft as fuel—

(1) for the transportation of a qualified fractional owner with respect to the fractional ownership aircraft program of which such aircraft is a part, or

(2) with respect to the use of such aircraft on account of such a qualified fractional owner, including use in deadhead service.

**(b) Amount of tax**

The rate of tax imposed by subsection (a) is 14.1 cents per gallon.

**(c) Definitions and special rules**

For purposes of this section—

**(1) Fractional program aircraft**

The term “fractional program aircraft” means, with respect to any fractional ownership aircraft program, any aircraft which—

(A) is listed as a fractional program aircraft in the management specifications issued to the manager of such program by the Federal Aviation Administration under sub-

part K of part 91 of title 14, Code of Federal Regulations, and

(B) is registered in the United States.

**(2) Fractional ownership aircraft program**

The term “fractional ownership aircraft program” means a program under which—

(A) a single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners,

(B) there are 1 or more fractional owners per fractional program aircraft, with at least 1 fractional program aircraft having more than 1 owner,

(C) with respect to at least 2 fractional program aircraft, none of the ownership interests in such aircraft are—

(i) less than the minimum fractional ownership interest, or

(ii) held by the program manager referred to in subparagraph (A),

(D) there exists a dry-lease aircraft exchange arrangement among all of the fractional owners, and

(E) there are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

**(3) Definitions related to fractional ownership interests**

**(A) Qualified fractional owner**

The term “qualified fractional owner” means any fractional owner which has a minimum fractional ownership interest in at least one fractional program aircraft.

**(B) Minimum fractional ownership interest**

The term “minimum fractional ownership interest” means, with respect to each type of aircraft—

(i) a fractional ownership interest equal to or greater than 1/16 of at least 1 subsonic, fixed wing, or powered lift aircraft, or

(ii) a fractional ownership interest equal to or greater than 1/32 of at least 1 rotorcraft aircraft.

**(C) Fractional ownership interest**

The term “fractional ownership interest” means—

(i) the ownership of an interest in a fractional program aircraft,

(ii) the holding of a multi-year leasehold interest in a fractional program aircraft, or

(iii) the holding of a multi-year leasehold interest which is convertible into an ownership interest in a fractional program aircraft.

**(D) Fractional owner**

The term “fractional owner” means any person owning any interest (including the entire interest) in a fractional program aircraft.

**(4) Dry-lease aircraft exchange**

The term “dry-lease aircraft exchange” means an agreement, documented by the writ-

ten program agreements, under which the fractional program aircraft are available, on an as needed basis without crew, to each fractional owner.

**(5) Special rule relating to use of fractional program aircraft for flight demonstration, maintenance, or training**

For purposes of subsection (a), a fractional program aircraft shall not be considered to be used for the transportation of a qualified fractional owner, or on account of such qualified fractional owner, when it is used for flight demonstration, maintenance, or crew training.

**(6) Special rule relating to deadhead service**

A fractional program aircraft shall not be considered to be used on account of a qualified fractional owner when it is used in deadhead service and a person other than a qualified fractional owner is separately charged for such service.

**(d) Termination**

This section shall not apply to liquids used as a fuel in an aircraft after September 30, 2021.

(Added Pub. L. 112–95, title XI, §1103(a)(1), Feb. 14, 2012, 126 Stat. 149.)

**EFFECTIVE DATE**

Pub. L. 112–95, title XI, §1103(d)(1), Feb. 14, 2012, 126 Stat. 151, provided that: “The amendments made by subsection (a) [enacting this section and amending sections 4082 and 9502 of this title] shall apply to fuel used after March 31, 2012.”

**Subchapter C—Heavy Trucks and Trailers**

Sec.

- 4051. Imposition of tax on heavy trucks and trailers sold at retail.
- 4052. Definitions and special rules.
- 4053. Exemptions.

**AMENDMENTS**

1990—Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–438, redesignated this subchapter, formerly subchapter B, as subchapter C.

**§ 4051. Imposition of tax on heavy trucks and trailers sold at retail**

**(a) Imposition of tax**

**(1) In general**

There is hereby imposed on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is so sold:

- (A) Automobile truck chassis.
- (B) Automobile truck bodies.
- (C) Truck trailer and semitrailer chassis.
- (D) Truck trailer and semitrailer bodies.
- (E) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

**(2) Exclusion for trucks weighing 33,000 pounds or less**

The tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies, suitable for use with a vehicle which has a gross vehicle weight of

33,000 pounds or less (as determined under regulations prescribed by the Secretary).

**(3) Exclusion for trailers weighing 26,000 pounds or less**

The tax imposed by paragraph (1) shall not apply to truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less (as determined under regulations prescribed by the Secretary).<sup>1</sup>

**(4) Exclusion for tractors weighing 19,500 pounds or less**

The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if—

(A) such tractor has a gross vehicle weight of 19,500 pounds or less (as determined by the Secretary), and

(B) such tractor, in combination with a trailer or semitrailer, has a gross combined weight of 33,000 pounds or less (as determined by the Secretary).

**(5) Sale of trucks, etc., treated as sale of chassis and body**

For purposes of this subsection, a sale of an automobile truck or truck trailer or semitrailer shall be considered to be a sale of a chassis and of a body described in paragraph (1).

**(b) Separate purchase of truck or trailer and parts and accessories therefor**

Under regulations prescribed by the Secretary—

**(1) In general**

If—

(A) the owner, lessee, or operator of any vehicle which contains an article taxable under subsection (a) installs (or causes to be installed) any part or accessory on such vehicle, and

(B) such installation is not later than the date 6 months after the date such vehicle (as it contains such article) was first placed in service,

then there is hereby imposed on such installation a tax equal to 12 percent of the price of such part or accessory and its installation.

**(2) Exceptions**

Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory, or

(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to any vehicle does not exceed \$1,000 (or such other amount or amounts as the Secretary may by regulations prescribe).

**(3) Installers secondarily liable for tax**

The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1).

**(c) Termination**

On and after October 1, 2022, the taxes imposed by this section shall not apply.

<sup>1</sup> So in original. Probably should be preceded by a closing parenthesis.

**(d) Credit against tax for tire tax**

If—

(1) tires are sold on or in connection with the sale of any article, and

(2) tax is imposed by this subchapter on the sale of such tires,

there shall be allowed as a credit against the tax imposed by this subchapter an amount equal to the tax (if any) imposed by section 4071 on such tires.

(Added Pub. L. 97-424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2174; amended Pub. L. 98-369, div. A, title VII, §734(g), title IX, §921, July 18, 1984, 98 Stat. 980, 1009; Pub. L. 99-514, title XVIII, §§1877(c), 1899A(47), Oct. 22, 1986, 100 Stat. 2902, 2961; Pub. L. 100-17, title V, §502(a)(2), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101-508, title XI, §11211(c)(1), Nov. 5, 1990, 104 Stat. 1388-426; Pub. L. 102-240, title VIII, §8002(a)(1), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105-34, title XIV, §§1401(a), 1402(a), 1432(a), Aug. 5, 1997, 111 Stat. 1045, 1046, 1050; Pub. L. 105-178, title IX, §9002(a)(1)(D), June 9, 1998, 112 Stat. 499; Pub. L. 109-59, title XI, §§11101(a)(1)(D), 11112(a), Aug. 10, 2005, 119 Stat. 1943, 1946; Pub. L. 112-30, title I, §142(a)(2)(B), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112-102, title IV, §402(a)(2)(B), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112-140, title IV, §402(a)(2)(B), June 29, 2012, 126 Stat. 402; Pub. L. 112-141, div. D, title I, §40102(a)(2)(B), July 6, 2012, 126 Stat. 844; Pub. L. 114-94, div. C, title XXXI, §31102(a)(2)(B), Dec. 4, 2015, 129 Stat. 1727.)

**PRIOR PROVISIONS**

A prior section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined the price for which articles were sold for purposes of determining retailers excise taxes, prior to repeal by Pub. L. 94-455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

**AMENDMENTS**

2015—Subsec. (c). Pub. L. 114-94 substituted “October 1, 2022” for “October 1, 2016”.

2012—Subsec. (c). Pub. L. 112-141 substituted “October 1, 2016” for “July 1, 2012”.

Pub. L. 112-140, §§1(c), 402(a)(2)(B), temporarily substituted “July 7, 2012” for “July 1, 2012”. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102 substituted “July 1, 2012” for “April 1, 2012”.

2011—Subsec. (c). Pub. L. 112-30 substituted “April 1, 2012” for “October 1, 2011”.

2005—Subsec. (a)(4), (5). Pub. L. 109-59, §11112(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 109-59, §11101(a)(1)(D), substituted “2011” for “2005”.

1998—Subsec. (c). Pub. L. 105-178 substituted “2005” for “1999”.

1997—Subsec. (b)(2)(B). Pub. L. 105-34, §1401(a), substituted “\$1,000” for “\$200”.

Subsec. (d). Pub. L. 105-34, §1432(a), redesignated subsec. (e) as (d) and struck out former subsec. (d) which provided for a temporary reduction in tax on certain piggyback trailers.

Subsec. (e). Pub. L. 105-34, §1432(a), redesignated subsec. (e) as (d).

Pub. L. 105-34, §1401(a), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “In the case of any article taxable under subsection (a) on which tax was imposed under section 4061(a), subsection (a) shall be applied by substituting ‘2 percent’ for ‘12 percent’.”

1991—Subsec. (c). Pub. L. 102-240 substituted “1999” for “1995”.

1990—Subsec. (c). Pub. L. 101-508 substituted “1995” for “1993”.

1987—Subsec. (c). Pub. L. 100-17 substituted “1993” for “1988”.

1986—Subsec. (d)(1). Pub. L. 99-514, §1899A(47), substituted “July 18, 1984” for “the date of the enactment of the Tax Reform Act of 1984”.

Subsec. (d)(3). Pub. L. 99-514, §1877(c), inserted at end “No tax shall be imposed by reason of this paragraph on any use or resale which occurs more than 6 years after the date of the first retail sale.”

1984—Subsec. (b)(3). Pub. L. 98-369, §734(g), substituted “The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1)” for “In addition to the owner, lessee, or operator of the vehicle, the owner of the trade or business installing the part or accessory shall be liable for the tax imposed by paragraph (1)”.

Subsecs. (d), (e). Pub. L. 98-369, §921, added subsec. (d) and redesignated former subsec. (d) as (e).

**EFFECTIVE DATE OF 2015 AMENDMENT**

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT**

Amendment by Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112-140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112-140, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as a note under section 4041 of this title.

**EFFECTIVE DATE OF 2011 AMENDMENT**

Amendment by Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

**EFFECTIVE DATE OF 2005 AMENDMENT**

Pub. L. 109-59, title XI, §11112(b), Aug. 10, 2005, 119 Stat. 1946, provided that: “The amendments made by this section [amending this section] shall apply to sales after September 30, 2005.”

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-34, title XIV, §1401(b), Aug. 5, 1997, 111 Stat. 1046, provided that: “The amendments made by subsection (a) [amending this section and section 4003 of this title] shall apply to installations on vehicles sold after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-34, title XIV, §1402(c), Aug. 5, 1997, 111 Stat. 1046, provided that: “The amendments made by this section [amending this section and section 4052 of this title] shall take effect on January 1, 1998.”

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by section 1877(c) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Pub. L. 98-369, div. A, title VII, §736, July 18, 1984, 98 Stat. 985, provided that: “Except as otherwise provided

in this subtitle [subtitle C (§§ 731-736) of title VII of div. A of Pub. L. 98-369, amending this section and sections 48, 1366, 4052, 4053, 4071 to 4073, 4081, 4082, 4216, 4218, 4221 to 4223, 4227, 4481, 6401, 6412, 6416, 6427, 6511, and 9502 of this title, repealing sections 4061 to 4063 of this title, and amending provisions set out as notes under sections 4061 and 4081 of this title], any amendment made by this subtitle shall take effect as if included in the provisions of the Highway Revenue Act of 1982 [Pub. L. 97-424] to which such amendment relates.”

#### EFFECTIVE DATE

Pub. L. 97-424, title V, §512(b)(3), Jan. 6, 1983, 96 Stat. 2177, provided that: “The amendments made by this subsection [enacting this subchapter and amending section 6416 of this title] shall take effect on April 1, 1983.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 4052. Definitions and special rules

#### (a) First retail sale

For purposes of this subchapter—

##### (1) In general

The term “first retail sale” means the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

##### (2) Leases considered as sales

Rules similar to the rules of section 4217 shall apply.

##### (3) Use treated as sale

###### (A) In general

If any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him.

###### (B) Exemption for use in further manufacture

Subparagraph (A) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him.

###### (C) Computation of tax

In the case of any person made liable for tax by subparagraph (A), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

#### (b) Determination of price

##### (1) In general

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the article in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(iii) the value of any component of such article if—

(I) such component is furnished by the first user of such article, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

#### (2) Sales not at arm's length

In the case of any article sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax under this subchapter shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

#### (3) Long-term lease

##### (A) In general

In the case of any long-term lease of an article which is treated as the first retail sale of such article, the tax under this subchapter shall be computed on a price equal to—

(i) the sum of—

(I) the price (determined under this subchapter but without regard to paragraph (4)) at which such article was sold to the lessor, and

(II) the cost of any parts and accessories installed by the lessor on such article before the first use by the lessee or leased in connection with such long-term lease, plus

(ii) an amount equal to the presumed markup percentage of the sum described in clause (i).

##### (B) Presumed markup percentage

For purposes of subparagraph (A), the term “presumed markup percentage” means the average markup percentage of retailers of articles of the type involved, as determined by the Secretary.

##### (C) Exceptions under regulations

To the extent provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to specified types of leases where its application is not necessary to carry out the purposes of this subsection.

#### (4) Special rule where tax paid by manufacturer, producer, or importer

##### (A) In general

In any case where the manufacturer, producer, or importer of any article (or a related person) is liable for tax imposed by this subchapter with respect to such article, the tax under this subchapter shall be computed on a price equal to the sum of—

(i) the price which would (but for this paragraph) be determined under this subchapter, plus

(ii) the product of the price referred to in clause (i) and the presumed markup percentage determined under paragraph (3)(B).

**(B) Related person**

For purposes of this paragraph—

**(i) In general**

Except as provided in clause (ii), the term “related person” means any person who is a member of the same controlled group (within the meaning of section 5061(e)(3)) as the manufacturer, producer, or importer.

**(ii) Exception for retail establishment**

To the extent provided in regulations prescribed by the Secretary, a person shall not be treated as a related person with respect to the sale of any article if such article is sold through a permanent retail establishment in the normal course of the trade or business of being a retailer.

**(c) Certain combinations not treated as manufacture**

**(1) In general**

For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

**(2) Items**

The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

**(d) Certain other rules made applicable**

Under regulations prescribed by the Secretary, rules similar to the rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply for purposes of this subchapter.

**(e) Long-term lease**

For purposes of this section, the term “long-term lease” means any lease with a term of 1 year or more. In determining a lease term for purposes of the preceding sentence, the rules of section 168(i)(3)(A) shall apply.

**(f) Certain repairs and modifications not treated as manufacture**

**(1) In general**

An article described in section 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article.

**(2) Exception**

Paragraph (1) shall not apply if the article (as repaired or modified) would, if new, be tax-

able under section 4051 and the article when new was not taxable under such section or the corresponding provision of prior law.

**(g) Regulations**

The Secretary shall prescribe regulations which permit, in lieu of any other certification, persons who are purchasing articles taxable under this subchapter for resale or leasing in a long-term lease to execute a statement (made under penalties of perjury) on the sale invoice that such sale is for resale. The Secretary shall not impose any registration requirement as a condition of using such procedure.

(Added Pub. L. 97-424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2175; amended Pub. L. 98-369, div. A, title VII, §§731, 735(b)(2), July 18, 1984, 98 Stat. 976, 981; Pub. L. 100-17, title V, §§505(a)-(c), 506(a), Apr. 2, 1987, 101 Stat. 258, 259; Pub. L. 100-647, title VI, §6111(a), Nov. 10, 1988, 102 Stat. 3713; Pub. L. 105-34, title XIV, §§1402(b), 1434(a), (b), Aug. 5, 1997, 111 Stat. 1046, 1052; Pub. L. 105-206, title VI, §6014(c), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered the sale of article for excise tax purposes, prior to repeal by Pub. L. 94-455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105-206 substituted “such section” for “this section”.

1997—Subsec. (b)(1)(B)(ii) to (iv). Pub. L. 105-34, §1402(b), inserted “and” at end of cl. (ii), redesignated cl. (iv) as (iii), and struck out former cl. (iii) which read as follows: “the fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base), and”.

Subsec. (d). Pub. L. 105-34, §1434(b)(1), substituted “rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply” for “rules of—

“(1) subsections (c) and (d) of section 4216 (relating to partial payments), and

“(2) section 4222 (relating to registration), shall apply”.

Subsec. (e). Pub. L. 105-34, §1434(a), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 105-34, §1434(a), added subsec. (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 105-34, §1434(b)(2), added subsec. (g).

1988—Subsec. (a)(1). Pub. L. 100-647 substituted “production, manufacture” for “manufacture, production”.

1987—Subsec. (a)(1). Pub. L. 100-17, §505(a), inserted “or leasing in a long-term lease” after “resale”.

Subsec. (b)(3). Pub. L. 100-17, §505(b), added par. (3).

Subsec. (b)(4). Pub. L. 100-17, §506(a), added par. (4).

Subsec. (f). Pub. L. 100-17, §505(c), added subsec. (f).

1984—Subsec. (b)(1)(B)(iv). Pub. L. 98-369, §731, added cl. (iv).

Subsec. (c). Pub. L. 98-369, §735(b)(2), in amending subsec. (c) generally, designated existing provisions as par. (1), in par. (1) as so designated substituted “by reason of merely combining such article with any article listed in paragraph (2)” for “with any equipment or other item listed in section 4063(d)”, and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.



## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1402(b) of Pub. L. 105-34 effective Jan. 1, 1998, see section 1402(c) of Pub. L. 105-34, set out as a note under section 4051 of this title.

Pub. L. 105-34, title XIV, §1434(c), Aug. 5, 1997, 111 Stat. 1052, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 1998."

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6111(b), Nov. 10, 1988, 102 Stat. 3713, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1988."

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-17, title V, §505(d), Apr. 2, 1987, 101 Stat. 259, provided that: "The amendments made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987]."

Pub. L. 100-17, title V, §506(b), Apr. 2, 1987, 101 Stat. 259, provided that: "The amendment made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the 1st day of the 1st calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987]."

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

## § 4053. Exemptions

No tax shall be imposed by section 4051 on any of the following articles:

**(1) Camper coaches bodies for self-propelled mobile homes**

Any article designed—

(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

(B) to be used primarily as living quarters or camping accommodations.

**(2) Feed, seed, and fertilizer equipment**

Any body primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,

(C) to spread feed, seed, or fertilizer on farms,

(D) to load or unload feed, seed, or fertilizer on farms, or

(E) for any combination of the foregoing.

**(3) House trailers**

Any house trailer.

**(4) Ambulances, hearses, etc.**

Any ambulance, hearse, or combination ambulance-hearse.

**(5) Concrete mixers**

Any article designed—

(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

(B) to be used to process or prepare concrete.

**(6) Trash containers, etc.**

Any box, container, receptacle, bin or other similar article—

(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

**(7) Rail trailers and rail vans**

Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car.

**(8) Mobile machinery**

Any vehicle which consists of a chassis—

(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

**(9) Idling reduction device**

Any device or system of devices which—

(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

(B) is determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

**(10) Advanced insulation**

Any insulation that has an R value of not less than R35 per inch.

(Added Pub. L. 97-424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2176; amended Pub. L. 98-369, div. A, title VII, §735(b)(1), July 18, 1984, 98 Stat. 981; Pub. L. 108-357, title VIII, §851(a)(1), Oct. 22, 2004,

118 Stat. 1607; Pub. L. 110-343, div. B, title II, § 206(a), Oct. 3, 2008, 122 Stat. 3839.)

#### PRIOR PROVISIONS

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85-859, title I, § 104, 72 Stat. 1276, made provision for the imposition of the retailers tax on installment sales, prior to repeal by Pub. L. 94-455, title XIX, § 1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

For provisions of prior sections 4054 to 4058 of this title, see Prior Provisions note set out preceding section 4041 of this title.

#### AMENDMENTS

2008—Pars. (9), (10). Pub. L. 110-343 added pars. (9) and (10).

2004—Par. (8). Pub. L. 108-357 added par. (8).

1984—Pub. L. 98-369 amended section generally, substituting provisions listing articles on which no tax under section 4051 shall be imposed for former provisions which stated that no tax be imposed under section 4051 on any article specified in subsection (a) of section 4063 and that the exemptions provided by section 4221(a) extended to the tax imposed by section 4051.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title II, § 206(b), Oct. 3, 2008, 122 Stat. 3839, provided that: “The amendment made by this section [amending this section] shall apply to sales or installations after the date of the enactment of this Act [Oct. 3, 2008].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 851(a)(2), Oct. 22, 2004, 118 Stat. 1607, provided that: “The amendment made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

### CHAPTER 32—MANUFACTURERS EXCISE TAXES

Subchapter	Sec. <sup>1</sup>
A. Automotive and related items .....	4061
B. Coal .....	4121
C. Certain vaccines .....	4131
D. Recreational equipment .....	4161
E. Medical devices .....	4191
F. Special provisions applicable to manufacturers tax .....	4216
G. Exemptions, registration, etc .....	4221

#### AMENDMENTS

2010—Pub. L. 111-152, title I, § 1405(a)(2), Mar. 30, 2010, 124 Stat. 1065, added item for subchapter E.

1987—Pub. L. 100-203, title IX, § 9201(c), Dec. 22, 1987, 101 Stat. 1330-330, added item for subchapter C.

1978—Pub. L. 95-227, § 2(c), Feb. 10, 1978, 92 Stat. 12, added item for subchapter B.

1965—Pub. L. 89-44, title II, §§ 203, 204, 206, June 21, 1965, 79 Stat. 139, 140, struck out items for subchapters B, C and E.

#### Subchapter A—Automotive and Related Items

Part	
I.	Gas guzzlers.

Part	
II.	Tires.
III.	Petroleum products.

#### AMENDMENTS

1984—Pub. L. 98-369, div. A, title VII, § 735(a)(3), (c)(5)(B), July 18, 1984, 98 Stat. 980, 982, substituted “Gas guzzlers” for “Motor vehicles” in item for part I, and struck out “and tubes” in item for part II.

#### PART I—GAS GUZZLERS

Sec.	
[4061 to 4063. Repealed.]	
4064.	Gas guzzler tax.

#### AMENDMENTS

1986—Pub. L. 99-514, title XVIII, § 1875(f), Oct. 22, 1986, 100 Stat. 2897, substituted “guzzler” for “guzzlers” in item 4064.

1984—Pub. L. 98-369, div. A, title VII, § 735(a)(2), July 18, 1984, 98 Stat. 980, substituted “GAS GUZZLERS” for “MOTOR VEHICLES” in part I heading, struck out items 4061 “Imposition of tax”, 4062 “Articles classified as parts”, and 4063 “Exemptions”, and substituted “guzzlers” for “guzzler” in item 4064.

1978—Pub. L. 95-618, title II, § 201(f), Nov. 9, 1978, 92 Stat. 3184, added item 4064.

1971—Pub. L. 92-178, title IV, § 401(g)(2)(D), Dec. 10, 1971, 85 Stat. 533, substituted “Articles classified as parts” for “Definitions” in item 4062.

#### [§§ 4061 to 4063. Repealed. Pub. L. 98-369, div. A, title VII, § 735(a)(1), July 18, 1984, 98 Stat. 980]

Section 4061, acts Aug. 16, 1954, ch. 736, 68A Stat. 481; Mar. 30, 1955, ch. 18, § 3(a)(2), 69 Stat. 14; Aug. 12, 1955, ch. 865, § 1, 69 Stat. 709; Mar. 29, 1956, ch. 115, § 3(a)(2), 70 Stat. 66; June 29, 1956, ch. 462, title II, § 203, 70 Stat. 388; Mar. 29, 1957, Pub. L. 85-12, § 3(a)(1), 71 Stat. 9; June 30, 1958, Pub. L. 85-475, § 3(a)(1), 72 Stat. 259; June 30, 1959, Pub. L. 86-75, § 3(a)(1), 73 Stat. 157; June 30, 1960, Pub. L. 86-564, title II § 202(a)(1), 74 Stat. 290; June 29, 1961, Pub. L. 87-61, title II, § 204, 75 Stat. 126; June 30, 1961, Pub. L. 87-72, § 3(a)(1), 75 Stat. 193; June 28, 1962, Pub. L. 87-508, § 3(a)(1), 76 Stat. 114; June 29, 1963, Pub. L. 88-52, § 3(a)(1), 77 Stat. 72; June 30, 1964, Pub. L. 88-348, § 2(a)(1), 78 Stat. 237; June 21, 1965, Pub. L. 89-44, title II, § 201, 79 Stat. 136; Mar. 15, 1966, Pub. L. 89-368, title II, § 201(a), 80 Stat. 65; Apr. 12, 1968, Pub. L. 90-285, § 1(a)(1), 82 Stat. 92; June 28, 1968, Pub. L. 90-364, title I, § 105(a)(1), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91-172, title VII, § 702(a)(1), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(3), (4), 84 Stat. 1743; Dec. 31, 1970, Pub. L. 91-614, title II, § 201(a)(1), 84 Stat. 1843; Dec. 10, 1971, Pub. L. 92-178, title IV, § 401(a)(1), (g) (1), 85 Stat. 530, 533; May 5, 1976, Pub. L. 94-280, title III, § 303(a)(3), (4), 90 Stat. 456; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(2), (3), 92 Stat. 2756; Jan. 6, 1983, Pub. L. 97-424, title V, § 512(a)(1), (2), 96 Stat. 2173, 2174, related to imposition of tax on trucks, buses, tractors, etc.

Section 4062, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Oct. 13, 1964, Pub. L. 88-653, § 5(b), 78 Stat. 1086; Nov. 13, 1966, Pub. L. 89-809, title II, § 212(a), 80 Stat. 1585; Dec. 10, 1971, Pub. L. 92-178, title IV, § 401(g)(2)(A)–(C), 85 Stat. 533, related to articles classified as parts.

Section 4063, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Aug. 11, 1955, ch. 805, § 1(g), 69 Stat. 690; Oct. 13, 1964, Pub. L. 88-653, § 5(a), 78 Stat. 1086; June 21, 1965, Pub. L. 89-44, title VIII, § 801(a), 79 Stat. 157; Dec. 30, 1969, Pub. L. 91-172, title IX, § 931(a), 83 Stat. 724; Dec. 31, 1970, Pub. L. 91-614, title III, § 303(a), 84 Stat. 1845; Dec. 10, 1971, Pub. L. 92-178, title IV, § 401(a)(2), (g)(3), 85 Stat. 530, 533; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), title XXI, § 2109(a), 90 Stat. 1834, 1904; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(ff)(1), 92 Stat. 2924; Nov. 9, 1978, Pub. L. 95-618, title II, § 231(a), 92 Stat. 3187; Jan. 6, 1983, Pub. L. 97-424, title V, § 512(a)(3), 96 Stat. 2174, related to exemptions from tax.

<sup>1</sup> Section numbers editorially supplied.

## EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Highway Revenue Act of 1982, Pub. L. 97-424, see section 736 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 4051 of this title.

**§ 4064. Gas guzzler tax****(a) Imposition of tax**

There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following table:

<b>If the fuel economy of the model type in which the automobile falls is:</b>	<b>The tax is:</b>
At least 22.5 .....	\$0
At least 21.5 but less than 22.5 .....	1,000
At least 20.5 but less than 21.5 .....	1,300
At least 19.5 but less than 20.5 .....	1,700
At least 18.5 but less than 19.5 .....	2,100
At least 17.5 but less than 18.5 .....	2,600
At least 16.5 but less than 17.5 .....	3,000
At least 15.5 but less than 16.5 .....	3,700
At least 14.5 but less than 15.5 .....	4,500
At least 13.5 but less than 14.5 .....	5,400
At least 12.5 but less than 13.5 .....	6,400
Less than 12.5 .....	7,700.

**(b) Definitions**

For purposes of this section—

**(1) Automobile****(A) In general**

The term “automobile” means any 4-wheeled vehicle propelled by fuel—

(i) which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

**(B) Exception for certain vehicles**

The term “automobile” does not include any vehicle which is treated as a nonpassenger automobile under the rules which were prescribed by the Secretary of Transportation for purposes of section 32901 of title 49, United States Code, and which were in effect on the date of the enactment of this section.

**(C) Exception for emergency vehicles**

The term “automobile” does not include any vehicle sold for use and used—

(i) as an ambulance or combination ambulance-hearse,

(ii) by the United States or by a State or local government for police or other law enforcement purposes, or

(iii) for other emergency uses prescribed by the Secretary by regulations.

**(2) Fuel economy**

The term “fuel economy” means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under subsection (c).

**(3) Model type**

The term “model type” means a particular class of automobile as determined by regulation by the EPA Administrator.

**(4) Model year**

The term “model year”, with reference to any specific calendar year, means a manufacturer’s annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term “model year” means the calendar year.

**(5) Manufacturer****(A) In general**

The term “manufacturer” includes a producer or importer.

**(B) Lengthening treated as manufacture**

For purposes of this section, subchapter G of this chapter, and section 6416(b)(3), the lengthening of an automobile by any person shall be treated as the manufacture of an automobile by such person.

**(6) EPA Administrator**

The term “EPA Administrator” means the Administrator of the Environmental Protection Agency.

**(7) Fuel**

The term “fuel” means gasoline and diesel fuel. The Secretary (after consultation with the Secretary of Transportation) may, by regulation, include any product of petroleum or natural gas within the meaning of such term if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

**(c) Determination of fuel economy**

For purposes of this section—

**(1) In general**

Fuel economy for any model type shall be measured in accordance with testing and calculation procedures established by the EPA Administrator by regulation. Procedures so established shall be the procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act. The EPA Administrator shall report any measurements of fuel economy to the Secretary.

**(2) Special rule for fuels other than gasoline**

The EPA Administrator shall by regulation determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

**(3) Time by which regulations must be issued**

Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months before the model year to which such procedures apply.

(Added Pub. L. 95-618, title II, §201(a), Nov. 9, 1978, 92 Stat. 3180; amended Pub. L. 99-514, title XVIII, §1812(e)(1)(B)(i), (ii), Oct. 22, 1986, 100

Stat. 2836; Pub. L. 101-508, title XI, § 11216(a)-(d), Nov. 5, 1990, 104 Stat. 1388-437; Pub. L. 103-272, § 5(g)(1), July 5, 1994, 108 Stat. 1374; Pub. L. 109-59, title XI, § 11111(a), Aug. 10, 2005, 119 Stat. 1946.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(1)(B), is Nov. 9, 1978.

Section 206 of the Clean Air Act, referred to in subsec. (c)(1), is section 206 of act July 14, 1955, ch. 360, title II, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1694, which is classified to section 7525 of Title 42, The Public Health and Welfare.

#### AMENDMENTS

2005—Subsec. (b)(1)(A). Pub. L. 109-59 struck out concluding provisions which read as follows: “In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii).”

1994—Subsec. (b)(1)(B). Pub. L. 103-272 substituted “section 32901 of title 49, United States Code,” for “section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001)”.

1990—Subsec. (a). Pub. L. 101-508, § 11216(a), amended subsec. (a) generally, substituting present provisions for provisions which set forth gas guzzler tax tables in the case of automobiles built in each of the model years 1980 through 1986 and later.

Subsec. (b)(1)(A). Pub. L. 101-508, § 11216(b), inserted at end “In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii).”

Subsec. (b)(5)(B). Pub. L. 101-508, § 11216(c), substituted heading for one which read: “Exception for certain small manufacturers” and amended text generally. Prior to amendment, text read as follows: “A person shall not be treated as the manufacturer of any automobile if—

“(i) such person would (but for this subparagraph) be so treated solely by reason of lengthening an existing automobile, and

“(ii) such person is a small manufacturer (as defined in subsection (d)(4)) for the model year in which such lengthening occurs.”

Subsec. (d). Pub. L. 101-508, § 11216(d), struck out subsec. (d) which prescribed special rules for small manufacturers.

1986—Subsec. (b)(1)(A)(ii). Pub. L. 99-514, § 1812(e)(1)(B)(i), substituted “unloaded gross vehicle weight” for “gross vehicle weight”.

Subsec. (b)(5). Pub. L. 99-514, § 1812(e)(1)(B)(ii), amended par. (5) generally, designating existing provisions as subpar. (A), adding subpar. (A) heading, and adding subpar. (B).

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, § 11111(b), Aug. 10, 2005, 119 Stat. 1946, provided that: “The amendment made by this section [amending this section] shall take effect on October 1, 2005.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, § 11216(e), Nov. 5, 1990, 104 Stat. 1388-437, provided that:

“(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to sales after December 31, 1990.

“(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section] shall take effect on January 1, 1991.

“(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall take effect on the date of the enactment of this section [Nov. 5, 1990].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVIII, § 1812(e)(1)(B)(iii), Oct. 22, 1986, 100 Stat. 2837, provided that: “The amendments

made by clauses (i) and (ii) [amending this section] shall take effect as if included in the amendments made by section 201 of Public Law 95-618 [see Effective Date note below]; except that the amendment made by clause (i) shall not apply to any station wagon if—

“(I) such station wagon is originally equipped with more than 6 seat belts,

“(II) such station wagon was manufactured before November 1, 1985, and

“(III) such station wagon is of the 1985 or 1986 model year.”

#### EFFECTIVE DATE

Pub. L. 95-618, title II, § 201(g), Nov. 9, 1978, 92 Stat. 3184, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [enacting this section and amending sections 1016, 4217, 4221, 4222, 4293, and 6416 of this title] shall apply with respect to 1980 and later model year automobiles (as defined in section 4064(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### PART II—TIRES

Sec.	
4071.	Imposition of tax.
4072.	Definitions.
4073.	Exemptions.

#### AMENDMENTS

2004—Pub. L. 108-357, title VIII, § 869(d)(2), Oct. 22, 2004, 118 Stat. 1623, substituted “Exemptions” for “Exemption for tires with internal wire fastening” in item 4073.

1984—Pub. L. 98-369, div. A, title VII, § 735(c)(5)(A), (C), July 18, 1984, 98 Stat. 982, struck out “AND TUBES” from heading of part II and substituted “Exemption for tires with internal wire fastening” for “Exemptions” in item 4073.

1956—Act June 29, 1956, ch. 462, title II, § 204(d), 70 Stat. 389, substituted “Definitions” for “Definition of rubber” in item 4072.

#### § 4071. Imposition of tax

##### (a) Imposition and rate of tax

There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.45 cents (4.725 cents in the case of a biasply tire or super single tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.

##### (b) Special rule for manufacturers who sell at retail

Under regulations prescribed by the Secretary, if the manufacturer, producer, or importer of any tire delivers such tire to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire in the same manner as if it had been sold at the time it was delivered to such retail store or outlet. This subsection shall not apply to an article in respect to which tax has been imposed by subsection (a).

Subsection (a) shall not apply to an article in respect of which tax has been imposed by this subsection.

**(c) Tires on imported articles**

For the purposes of subsection (a), if an article imported into the United States is equipped with tires—

(1) the importer of the article shall be treated as the importer of the tires with which such article is equipped, and

(2) the sale of the article by the importer thereof shall be treated as the sale of the tires with which such article is equipped.

This subsection shall not apply with respect to the sale of an automobile bus chassis or an automobile bus body.

**(d) Termination**

On and after October 1, 2022, the taxes imposed by subsection (a) shall not apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, §204(a), 70 Stat. 388; Pub. L. 86-440, §1(a), Apr. 22, 1960, 74 Stat. 80; Pub. L. 87-61, title II, §202, June 29, 1961, 75 Stat. 124; Pub. L. 89-523, §1(a), Aug. 1, 1966, 80 Stat. 331; Pub. L. 91-605, title III, §303(a)(5), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 92-178, title IV, §401(f), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94-280, title III, §303(a)(5), May 5, 1976, 90 Stat. 456; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-599, title V, §502(a)(4), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 96-222, title I, §108(c)(2)(C), Apr. 1, 1980, 94 Stat. 227; Pub. L. 96-596, §4(a)(1), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 96-598, §1(d), Dec. 24, 1980, 94 Stat. 3486; Pub. L. 97-424, title V, §§514(a), 516(a)(2), Jan. 6, 1983, 96 Stat. 2181, 2182; Pub. L. 98-369, div. A, title VII, §735(c)(2), July 18, 1984, 98 Stat. 982; Pub. L. 100-17, title V, §502(a)(3), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101-508, title XI, §11211(c)(2), Nov. 5, 1990, 104 Stat. 1388-426; Pub. L. 102-240, title VIII, §8002(a)(2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105-178, title IX, §9002(a)(1)(E), June 9, 1998, 112 Stat. 499; Pub. L. 108-357, title VIII, §869(a), (d)(1), Oct. 22, 2004, 118 Stat. 1623; Pub. L. 109-59, title XI, §11101(a)(1)(E), Aug. 10, 2005, 119 Stat. 1943; Pub. L. 112-30, title I, §142(a)(2)(C), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112-102, title IV, §402(a)(2)(C), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112-140, title IV, §402(a)(2)(C), June 29, 2012, 126 Stat. 402; Pub. L. 112-141, div. D, title I, §40102(a)(2)(C), July 6, 2012, 126 Stat. 844; Pub. L. 114-94, div. C, title XXXI, §31102(a)(2)(C), Dec. 4, 2015, 129 Stat. 1727.)

**AMENDMENTS**

2015—Subsec. (d). Pub. L. 114-94 substituted “October 1, 2022” for “October 1, 2016”.

2012—Subsec. (d). Pub. L. 112-141 substituted “October 1, 2016” for “July 1, 2012”.

Pub. L. 112-140, §§1(c), 402(a)(2)(C), temporarily substituted “July 7, 2012” for “July 1, 2012”. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102 substituted “July 1, 2012” for “April 1, 2012”.

2011—Subsec. (d). Pub. L. 112-30 substituted “April 1, 2012” for “October 1, 2011”.

2005—Subsec. (d). Pub. L. 109-59 substituted “2011” for “2005”.

2004—Subsec. (a). Pub. L. 108-357, §869(a), reenacted heading without change and amended text of subsec. (a)

generally. Prior to amendment, subsec. (a) imposed tax and set forth table of rates providing for no tax if the tire weighed not more than 40 lbs., tax of 15 cents per lb. in excess of 40 lbs. if the tire weighed more than 40 lbs. but not more than 70 lbs., tax of \$4.50 plus 30 cents per lb. in excess of 70 lbs. if the tire weighed more than 70 lbs. but not more than 90 lbs., and tax of \$10.50 plus 50 cents per lb. in excess of 90 lbs. if the tire weighed more than 90 lbs.

Subsec. (c). Pub. L. 108-357, §869(d)(1), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “For purposes of this section, weight shall be based on total weight exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary.”

Subsec. (e). Pub. L. 108-357, §869(d)(1), redesignated subsec. (e) as (c).

1998—Subsec. (d). Pub. L. 105-178 substituted “2005” for “1999”.

1991—Subsec. (d). Pub. L. 102-240 substituted “1999” for “1995”.

1990—Subsec. (d). Pub. L. 101-508 substituted “1995” for “1993”.

1987—Subsec. (d). Pub. L. 100-17 substituted “1993” for “1988”.

1984—Subsec. (b). Pub. L. 98-369, §735(c)(2)(A), struck out “or inner tube” after “any tire”, and struck out “or tube” after “such tire” in two places in first sentence.

Subsec. (c). Pub. L. 98-369, §735(c)(2)(B), substituted “on total weight exclusive” for “on total weight, except that in the case of tires such total weight shall be exclusive”.

Subsec. (e). Pub. L. 98-369, §735(c)(2)(C), struck out “or inner tubes (other than bicycle tires and inner tubes)” after “equipped with tires” in provisions preceding par. (1), struck out “and inner tubes” before “with which such article is equipped” in pars. (1) and (2), and substituted “sale of an automobile bus chassis or an automobile bus body” for “sale of an article if a tax on such sale is imposed under section 4061 or if such article is an automobile bus chassis or an automobile bus body” in provisions following par. (2).

Subsec. (f). Pub. L. 98-369, §735(c)(2)(D), struck out subsec. (f) which related to imported recapped or retreaded United States tires.

1983—Subsec. (a). Pub. L. 97-424, §514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

“(1) Tires of the type used on highway vehicles, 9.75 cents a pound.

“(2) Other tires (other than laminated tires to which paragraph (5) applies), 4.875 cents a pound.

“(3) Inner tubes, for tires, 10 cents a pound.

“(4) Tread rubber, 5 cents a pound.

“(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound.”

Subsec. (d). Pub. L. 97-424, §516(a)(2), substituted provision that, on and after Oct. 1, 1988, the taxes imposed by subsec. (a) shall not apply, for provision that, on and after Oct. 1, 1984, the tax imposed by subsec. (a)(1) would be 4.875 cents a pound, that by subsec. (a)(3) would be 9 cents a pound, and that subsec. (a)(4) would not apply.

1980—Subsec. (a)(1). Pub. L. 96-596, §4(a)(1)(A), substituted “9.75 cents” for “10 cents”.

Subsec. (a)(2). Pub. L. 96-596, §4(a)(1)(B), substituted “4.875 cents” for “5 cents”.

Subsec. (d)(1). Pub. L. 96-596, §4(a)(1)(C), substituted “4.875 cents” for “5 cents”.

Subsec. (e). Pub. L. 96-222 inserted references to an automobile bus chassis or body.

Subsec. (f). Pub. L. 96-598 added subsec. (f).

1978—Subsec. (d). Pub. L. 95-599 substituted “1984” for “1979”.

1976—Subsecs. (b), (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Subsec. (d). Pub. L. 94-280 substituted “1979” for “1977”.

1971—Subsec. (e). Pub. L. 92-178 added subsec. (e).

1970—Subsec. (d). Pub. L. 91-605 substituted “1977” for “1972”.

1966—Subsecs. (b) to (d). Pub. L. 89-523 added subsec. (b) and redesignated former subsec. (b) and (c) as (c) and (d), respectively.

1961—Subsec. (a)(1). Pub. L. 87-61, §202(a), increased tax from 8 to 10 cents a pound.

Subsec. (a)(3). Pub. L. 87-61, §202(c), increased tax from 9 to 10 cents a pound.

Subsec. (a)(4). Pub. L. 87-61, §202(c), increased tax from 3 to 5 cents a pound.

Subsec. (c). Pub. L. 87-61, §202(d), substituted “October 1, 1972” for “July 1, 1972”, added par. (2), and redesignated former par. (2) as (3).

1960—Subsec. (a)(2). Pub. L. 86-440, §1(a)(1), inserted “(other than laminated tires to which paragraph (5) applies)” after “other tires”.

Subsec. (a)(5). Pub. L. 86-440, §1(a)(2), added par. (5).

1956—Act June 29, 1956, increased tax on tires of type used on highway vehicles from 5 cents a pound to 8 cents a pound, provided for a tax of 3 cents a pound on tread rubber, and required on and after July 1, 1972, a reduction in tax on tires of type used on highway vehicles from 8 cents a pound to 5 cents a pound, and elimination of tax on tread rubber.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112-140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112-140, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §869(e), Oct. 22, 2004, 118 Stat. 1623, provided that: “The amendments made by this section [amending this section and sections 4072 and 4073 of this title] shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-424, title V, §514(b), Jan. 6, 1983, 96 Stat. 2181, provided that: “The amendment made by this sec-

tion [amending this section] shall apply to articles sold on or after January 1, 1984”.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96-598, §1(e), Dec. 24, 1980, 94 Stat. 3486, provided that: “The amendments made by this section [amending this section and sections 6416 and 6511 of this title] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Dec. 24, 1980].”

Pub. L. 96-596, §4(a)(2), Dec. 24, 1980, 94 Stat. 3475, provided that: “The amendments made by this subsection [amending this section] shall apply on and after January 1, 1981.”

Amendment by Pub. L. 96-222 effective as if included in the provision of the Energy Tax Act of 1978, Pub. L. 95-618, Nov. 9, 1978, 92 Stat. 3174, to which such amendment relates, see section 108(c)(7) of Pub. L. 96-222, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92-178, title IV, §401(h), Dec. 10, 1971, 85 Stat. 534, provided that:

“(1) Except as otherwise provided in this section, the amendments made by subsections (a), (f), and (g) [amending this section and sections 4061, 4062, 4063, 4216, 4221, 4222, 6412, and 6416 of this title] of this section shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [Dec. 10, 1971].

“(2) For purposes of paragraph (1), an article shall not be considered sold before the day after the date of the enactment of this Act [Dec. 10, 1971] unless possession or right to possession passes to the purchaser before such day.

“(3) In the case of—

“(A) a lease,

“(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

“(C) a conditional sale, or

“(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act [Dec. 10, 1971], payments made after such date, with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold before the day after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-523, §1(b), Aug. 1, 1966, 80 Stat. 331, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first calendar quarter which begins more than 20 days after the date on which this Act is enacted [Aug. 1, 1966].”

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-61 effective July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-440, §1(b), Apr. 22, 1960, 74 Stat. 81, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles

sold on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [April 22, 1960].”

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

#### ALLOWANCE OF CREDIT OR REFUND OF OVERPAYMENT OF TAX IMPOSED

Pub. L. 96-596, §4(b), Dec. 24, 1980, 94 Stat. 3475, provided that:

“(b) DETERMINATION OF OVERPAYMENT.—

“(1) IN GENERAL.—The determination of the extent to which any overpayment of tax imposed by section 4071(a)(1) or (2) or section 4071(b) has arisen by reason of an adjustment of a tire after the original sale pursuant to a warranty or guarantee, and the allowance of a credit or refund of any such overpayment, shall be determined in accordance with the principles set forth in regulations and rulings relating thereto to the extent in effect on March 31, 1978.

“(2) EFFECTIVE DATE.—This subsection shall apply to the adjustment of any tire after March 31, 1978, and prior to January 1, 1983.”

### § 4072. Definitions

#### (a) Taxable tire

For purposes of this chapter, the term “taxable tire” means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.

#### (b) Rubber

For purposes of this chapter, the term “rubber” includes synthetic and substitute rubber.

#### (c) Tires of the type used on highway vehicles

For purposes of this part, the term “tires of the type used on highway vehicles” means tires of the type used on—

- (1) motor vehicles which are highway vehicles, or
- (2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).

#### (d) Biasply

For purposes of this part, the term “biasply tire” means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

#### (e) Super single tire

For purposes of this part, the term “super single tire” means a single tire greater than 13 inches in cross section width designed to replace 2 tires in a dual fitment. Such term shall not include any tire designed for steering.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, §204(b), 70 Stat. 389; Pub. L. 98-369, div. A, title VII, §735(c)(3), July 18, 1984, 98 Stat. 982; Pub. L. 108-357, title VIII, §§851(c)(1), 869(b), Oct. 22, 2004, 118 Stat. 1608, 1623; Pub. L. 109-58, title XIII, §1364(a), Aug. 8, 2005, 119 Stat. 1060.)

#### AMENDMENTS

2005—Subsec. (e). Pub. L. 109-58 inserted at end “Such term shall not include any tire designed for steering.”

2004—Subsec. (a). Pub. L. 108-357, §869(b), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsec. (b). Pub. L. 108-357, §869(b), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Pub. L. 108-357, §851(c)(1), which directed amendment of par. (2) by inserting at end “Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).”, was executed by amending subsec. (b) by inserting that language after par. (2) to reflect the probable intent of Congress.

Subsecs. (c), (d). Pub. L. 108-357, §869(b), redesignated subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Pub. L. 108-357, §869(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 108-357, §869(b), redesignated subsec. (d) as (e).

1984—Subsecs. (b), (c). Pub. L. 98-369 redesignated subsec. (c) as (b) and struck out former subsec. (b) which defined “tread rubber”.

1956—Act June 29, 1956, substituted “Definitions” for “Definition of rubber” in section catchline.

Act June 29, 1956, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, §1364(b), Aug. 8, 2005, 119 Stat. 1060, provided that: “The amendment made by this section [amending this section] shall take effect as if included in section 869 of the American Jobs Creation Act of 2004 [Pub. L. 108-357].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §851(c)(2), Oct. 22, 2004, 118 Stat. 1608, provided that: “The amendment made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004].”

Amendment by section 869(b) of Pub. L. 108-357 applicable to sales in calendar years beginning more than 30 days after Oct. 22, 2004, see section 869(e) of Pub. L. 108-357, set out as a note under section 4071 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

### § 4073. Exemptions

The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, §204(c), 70 Stat. 389; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title VII, §735(c)(4), July 18, 1984, 98 Stat. 982; Pub. L. 108-357, title VIII, §869(c), Oct. 22, 2004, 118 Stat. 1623.)

#### AMENDMENTS

2004—Pub. L. 108-357 amended section catchline and text generally. Prior to amendment, text read as follows: “The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.”

1984—Pub. L. 98-369 substituted “Exemption for tires with internal wire fastening” for “Exemptions” in section catchline, and in text struck out subsec. (a) relat-

ing to exemption from tax on tires not more than 20 inches in diameter and not more than 1¾ inches in cross section, struck out subsec. (c) relating to exemption from tax on tread rubber in certain cases, and struck out letter designation “(b)” and subsection heading for subsec. (b) thereby designating text of former subsec. (b) as entire text of section.

1976—Subsec. (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1956—Subsec. (c). Act June 29, 1956, added subsec. (c).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to sales in calendar years beginning more than 30 days after Oct. 22, 2004, see section 869(e) of Pub. L. 108-357, set out as a note under section 4071 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

### PART III—PETROLEUM PRODUCTS

#### Subpart

- A. Motor and aviation fuels.
- B. Special provisions applicable to fuels tax.

#### AMENDMENTS

2004—Pub. L. 108-357, title VIII, §853(d)(2)(R), Oct. 22, 2004, 118 Stat. 1614, amended analysis generally, substituting items for subparts A “Motor and aviation fuels” and B “Special provisions applicable to fuels tax” for former items for subparts A “Gasoline and diesel fuel”, B “Aviation fuel”, and C “Special provisions applicable to petroleum products”.

1993—Pub. L. 103-66, title XIII, §13242(d)(43), Aug. 10, 1993, 107 Stat. 528, substituted “Gasoline and diesel fuel” for “Gasoline” in item for subpart A and “Aviation fuel” for “Diesel fuel and aviation fuel” in item for subpart B.

1987—Pub. L. 100-203, title X, §10502(d)(18), Dec. 22, 1987, 101 Stat. 1330-445, added item relating to subpart B.

1983—Pub. L. 97-424, title V, §515(b)(13), Jan. 6, 1983, 96 Stat. 2182, struck out the item for subpart B “Lubricating oil”.

#### SUBPART A—MOTOR AND AVIATION FUELS

#### Sec.

- 4081. Imposition of tax.
- 4082. Exemptions for diesel fuel and kerosene.
- 4083. Definitions; special rule; administrative authority.
- 4084. Cross references.

#### AMENDMENTS

2004—Pub. L. 108-357, title VIII, §853(d)(2)(S), Oct. 22, 2004, 118 Stat. 1614, substituted “Motor and Aviation Fuels” for “Gasoline and Diesel Fuel” in subpart heading.

1997—Pub. L. 105-34, title X, §1032(e)(3)(B), Aug. 5, 1997, 111 Stat. 935, inserted “and kerosene” after “diesel fuel” in item 4082.

1993—Pub. L. 103-66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 514, substituted “Gasoline and Diesel Fuel” for “Gasoline” in subpart heading and amended section analysis generally, substituting “Exemptions for diesel fuel” for “Definitions” in item 4082 and “Definitions; special rule; administrative authority” for “Cross references” in item 4083 and adding item 4084.

1986—Pub. L. 99-514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2774, struck out item 4083 “Exemption of sales to producer” and redesignated former item 4084 as 4083.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(2), 70 Stat. 397, substituted “Cross references” for “Relief of farmers from tax in case of gasoline used on the farm” in item 4084.

Act Apr. 2, 1956, ch. 160, §4(a)(2), 70 Stat. 90, added item 4084.

### § 4081. Imposition of tax

#### (a) Tax imposed

##### (1) Tax on removal, entry, or sale

##### (A) In general

There is hereby imposed a tax at the rate specified in paragraph (2) on—

- (i) the removal of a taxable fuel from any refinery,
- (ii) the removal of a taxable fuel from any terminal,
- (iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and
- (iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

##### (B) Exemption for bulk transfers to registered terminals or refineries

##### (i) In general

The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (except as provided in clause (ii)), and the operator of such terminal or refinery are registered under section 4101.

##### (ii) Nonapplication of registration to vessel operators entering by deep-draft vessel

For purposes of clause (i), a vessel operator is not required to be registered with respect to the entry of a taxable fuel transferred in bulk by a vessel described in section 4042(c)(1).

#### (2) Rates of tax

##### (A) In general

The rate of the tax imposed by this section is—

- (i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,
- (ii) in the case of aviation gasoline, 19.3 cents per gallon, and
- (iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon.

##### (B) Leaking Underground Storage Tank Trust Fund tax

The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

##### (C) Taxes imposed on fuel used in aviation

In the case of kerosene which is removed from any refinery or terminal directly into



the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

(i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and

(ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.

**(D) Diesel-water fuel emulsion**

In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting “19.7 cents” for “24.3 cents”. The preceding sentence shall not apply to the removal, sale, or use of diesel-water fuel emulsion unless the person so removing, selling, or using such fuel is registered under section 4101.

**(3) Certain refueler trucks, tankers, and tank wagons treated as terminal**

**(A) In general**

For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

(i) such terminal is located within an airport,

(ii) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.

**(B) Requirements**

A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

(ii) is not registered for highway use, and

(iii) is operated by—

(I) the terminal operator of such terminal, or

(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

**(C) Reporting**

The Secretary shall require under section 4101(d) reporting by such terminal operator of—

(i) any information obtained under subparagraph (B)(iii)(II), and

(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers,

or wagons operated by such terminal operator.

**(D) Applicable rate**

For purposes of paragraph (2)(C), in the case of any kerosene treated as removed from a terminal by reason of this paragraph—

(i) the rate of tax specified in paragraph (2)(C)(i) in the case of use described in such paragraph shall apply if such terminal is located within a secured area of an airport, and

(ii) the rate of tax specified in paragraph (2)(C)(ii) shall apply in all other cases.

**(4) Liability for tax on kerosene used in commercial aviation**

For purposes of paragraph (2)(C)(i), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.

**(b) Treatment of removal or subsequent sale by blender**

**(1) In general**

There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

**(2) Credit for tax previously paid**

If—

(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

**(c) Later separation of fuel from diesel-water fuel emulsion**

If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(D) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

**(d) Termination**

**(1) In general**

The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 2022.

**(2) Aviation fuels**

The rates of tax specified in subsection (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—

(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(B) after March 31, 2018.

**(3) Leaking Underground Storage Tank Trust Fund financing rate**

The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall apply after September 30, 1997, and before October 1, 2022.

**(e) Refunds in certain cases**

Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Mar. 30, 1955, ch. 18, §3(a)(3), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(3), 70 Stat. 66; June 29, 1956, ch. 462, title II, §205, 70 Stat. 389; Pub. L. 86-342, title II, §201(a), Sept. 21, 1959, 73 Stat. 613; Pub. L. 87-61, title II, §201(b)-(d), June 29, 1961, 75 Stat. 123, 124; Pub. L. 91-605, title III, §303(a)(6), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94-280, title III, §303(a)(6), May 5, 1976, 90 Stat. 456; Pub. L. 95-599, title V, §502(a)(5), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 95-618, title II, §221(a)(1), Nov. 9, 1978, 92 Stat. 3185; Pub. L. 96-223, title II, §232(a)(1), (b)(3)(A), (d)(3), Apr. 2, 1980, 94 Stat. 273, 276, 277; Pub. L. 97-424, title V, §§511(a)(1), (d)(1), 516(a)(3), Jan. 6, 1983, 96 Stat. 2169, 2171, 2182; Pub. L. 98-369, div. A, title VII, §732(a)(1), (2), title IX, §912(b), (f), July 18, 1984, 98 Stat. 976, 977, 1007; Pub. L. 99-499, title V, §521(a)(1), Oct. 17, 1986, 100 Stat. 1774; Pub. L. 99-514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2774; Pub. L. 100-17, title V, §502(a)(4), (c)(2), Apr. 2, 1987, 101 Stat. 256, 257; Pub. L. 100-203, title X, §10502(d)(2), Dec. 22, 1987, 101 Stat. 1330-444; Pub. L. 100-647, title I, §1017(c)(1), (14), title II, §2001(d)(5), title VI, §6104(a), Nov. 10, 1988, 102 Stat. 3575, 3577, 3595, 3711; Pub. L. 101-508, title XI, §§11211(a)(1)-(3), (5)(A)-(C), (c)(3), (e)(3), 11212(a), (d)(1), (e)(2), 11215(a), Nov. 5, 1990, 104 Stat. 1388-423, 1388-424, 1388-426, 1388-427, 1388-430, 1388-432, 1388-436; Pub. L. 102-240, title VIII, §8002(a)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 102-486, title XIX, §1920(a), (b), Oct. 24, 1992, 106 Stat. 3026; Pub. L. 103-66, title XIII, §§13241(a), 13242(a), Aug. 10, 1993, 107 Stat. 510, 514; Pub. L. 104-188, title I, §1609(a)(2), (g)(1), (2), (4)(B), Aug. 20, 1996, 110 Stat. 1841-1843; Pub. L. 105-2, §2(a)(2), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105-34, title X, §§1031(a)(2), 1032(b), 1033, Aug. 5, 1997, 111 Stat. 929, 933, 937; Pub. L. 105-178, title IX, §§9002(a)(1)(F), 9003(a)(1)(C), (b)(2)(B), (C), June 9, 1998, 112 Stat. 499, 502, 503; Pub. L. 108-357, title III, §301(c)(7), title VIII, §§853(a)(1)-(3)(A), (4), 860(a), Oct. 22, 2004, 118 Stat. 1461, 1609-1611, 1618; Pub. L. 109-6, §1(a), Mar. 31, 2005, 119 Stat. 20; Pub. L. 109-58, title XIII, §§1343(a), (b)(2), 1362(a), Aug. 8, 2005, 119 Stat. 1051, 1052, 1059; Pub. L. 109-59, title XI, §§11101(a)(1)(F), 11151(b)(1), (2), 11161(a)(1)-(4)(D), 11166(b)(1), Aug. 10, 2005, 119 Stat. 1944, 1968-1970, 1976; Pub. L. 110-161, div. K, title I, §116(a), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110-190, §2(a), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110-253, §2(a), June

30, 2008, 122 Stat. 2417; Pub. L. 110-330, §2(a), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111-12, §2(a), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111-69, §2(a), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111-116, §2(a), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111-153, §2(a), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111-161, §2(a), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111-197, §2(a), July 2, 2010, 124 Stat. 1353; Pub. L. 111-216, title I, §101(a), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111-249, §2(a), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111-329, §2(a), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112-7, §2(a), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112-16, §2(a), May 31, 2011, 125 Stat. 218; Pub. L. 112-21, §2(a), June 29, 2011, 125 Stat. 233; Pub. L. 112-27, §2(a), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112-30, title I, §142(a)(1)(C), (2)(D), title II, §202(a), Sept. 16, 2011, 125 Stat. 356, 357; Pub. L. 112-91, §2(a), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112-95, title XI, §1101(a), Feb. 14, 2012, 126 Stat. 148; Pub. L. 112-102, title IV, §402(a)(1)(C), (2)(D), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112-140, title IV, §402(a)(1)(C), (2)(D), June 29, 2012, 126 Stat. 402; Pub. L. 112-141, div. D, title I, §40102(a)(1)(C), (2)(D), July 6, 2012, 126 Stat. 844; Pub. L. 114-55, title II, §202(a), Sept. 30, 2015, 129 Stat. 525; Pub. L. 114-94, div. C, title XXXI, §31102(a)(1)(C), (2)(D), Dec. 4, 2015, 129 Stat. 1727; Pub. L. 114-141, title II, §202(a), Mar. 30, 2016, 130 Stat. 324; Pub. L. 114-190, title I, §1202(a), July 15, 2016, 130 Stat. 619; Pub. L. 115-63, title II, §202(a), Sept. 29, 2017, 131 Stat. 1171.)

REFERENCES IN TEXT

Section 211 of the Clean Air Act, referred to in subsec. (a)(2)(D), is classified to section 7545 of Title 42, The Public Health and Welfare.

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (d)(2)(A), is the date of enactment of Pub. L. 105-2, which was approved Feb. 28, 1997.

AMENDMENTS

2017—Subsec. (d)(2)(B). Pub. L. 115-63 substituted “March 31, 2018” for “September 30, 2017”.

2016—Subsec. (d)(2)(B). Pub. L. 114-190 substituted “September 30, 2017” for “July 15, 2016”.

Pub. L. 114-141 substituted “July 15, 2016” for “March 31, 2016”.

2015—Subsec. (d)(1). Pub. L. 114-94, §31102(a)(1)(C), substituted “September 30, 2022” for “September 30, 2016”.

Subsec. (d)(2)(B). Pub. L. 114-55 substituted “March 31, 2016” for “September 30, 2015”.

Subsec. (d)(3). Pub. L. 114-94, §31102(a)(2)(D), substituted “October 1, 2022” for “October 1, 2016”.

2012—Subsec. (d)(1). Pub. L. 112-141, §40102(a)(1)(C), substituted “September 30, 2016” for “June 30, 2012”.

Pub. L. 112-140, §§1(c), 402(a)(1)(C), temporarily substituted “July 6, 2012” for “June 30, 2012”. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102, §402(a)(1)(C), substituted “June 30, 2012” for “March 31, 2012”.

Subsec. (d)(2)(B). Pub. L. 112-95 substituted “September 30, 2015” for “February 17, 2012”.

Pub. L. 112-91 substituted “February 17, 2012” for “January 31, 2012”.

Subsec. (d)(3). Pub. L. 112-141, §40102(a)(2)(D), substituted “October 1, 2016” for “July 1, 2012”.

Pub. L. 112-140, §§1(c), 402(a)(2)(D), temporarily substituted “July 7, 2012” for “July 1, 2012”. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102, §402(a)(2)(D), substituted “July 1, 2012” for “April 1, 2012”.

2011—Subsec. (d)(1). Pub. L. 112-30, §142(a)(1)(C), substituted “March 31, 2012” for “September 30, 2011”.

Subsec. (d)(2)(B). Pub. L. 112-30, §202(a), substituted “January 31, 2012” for “September 16, 2011”.

Pub. L. 112-27 substituted “September 16, 2011” for “July 22, 2011”.

Pub. L. 112-21 substituted “July 22, 2011” for “June 30, 2011”.

Pub. L. 112-16 substituted “June 30, 2011” for “May 31, 2011”.

Pub. L. 112-7 substituted “May 31, 2011” for “March 31, 2011”.

Subsec. (d)(3). Pub. L. 112-30, §142(a)(2)(D), substituted “April 1, 2012” for “October 1, 2011”.

2010—Subsec. (d)(2)(B). Pub. L. 111-329 substituted “March 31, 2011” for “December 31, 2010”.

Pub. L. 111-249 substituted “December 31, 2010” for “September 30, 2010”.

Pub. L. 111-216 substituted “September 30, 2010” for “August 1, 2010”.

Pub. L. 111-197 substituted “August 1, 2010” for “July 3, 2010”.

Pub. L. 111-161 substituted “July 3, 2010” for “April 30, 2010”.

Pub. L. 111-153 substituted “April 30, 2010” for “March 31, 2010”.

2009—Subsec. (d)(2)(B). Pub. L. 111-116 substituted “March 31, 2010” for “December 31, 2009”.

Pub. L. 111-69 substituted “December 31, 2009” for “September 30, 2009”.

Pub. L. 111-12 substituted “September 30, 2009” for “March 31, 2009”.

2008—Subsec. (d)(2)(B). Pub. L. 110-330 substituted “March 31, 2009” for “September 30, 2008”.

Pub. L. 110-253 substituted “September 30, 2008” for “June 30, 2008”.

Pub. L. 110-190 substituted “June 30, 2008” for “February 29, 2008”.

2007—Subsec. (d)(2)(B). Pub. L. 110-161 substituted “February 29, 2008” for “September 30, 2007”.

2005—Subsec. (a)(1)(B). Pub. L. 109-59, §11166(b)(1), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: “The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered under section 4101.”

Subsec. (a)(2)(A)(ii) to (iv). Pub. L. 109-59, §11161(a)(1), inserted “and” at end of cl. (ii), substituted a period for “, and” at end of cl. (iii), and struck out cl. (iv) which read as follows: “in the case of aviation-grade kerosene, 21.8 cents per gallon.”

Subsec. (a)(2)(C). Pub. L. 109-59, §11161(a)(2), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use under section 4101, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.”

Pub. L. 109-59, §11151(b)(1), substituted “for use in commercial aviation by a person registered for such use under section 4101” for “for use in commercial aviation”.

Subsec. (a)(2)(D). Pub. L. 109-58, §1343(a), added subpar. (D).

Subsec. (a)(3)(A)(i). Pub. L. 109-59, §11161(a)(3)(A), struck out “a secured area of” before “an airport”.

Subsec. (a)(3)(A)(ii), (iv). Pub. L. 109-59, §11161(a)(4)(A), struck out “aviation-grade” before “kerosene”.

Subsec. (a)(3)(D). Pub. L. 109-59, §11161(a)(3)(B), added subpar. (D).

Subsec. (a)(4). Pub. L. 109-59, §11161(a)(4)(B), (C), struck out “aviation-grade” before “kerosene” in heading and substituted “paragraph (2)(C)(i)” for “paragraph (2)(C)” in text.

Subsec. (c). Pub. L. 109-58, §1343(b)(2), added subsec. (c).

Subsec. (d)(1). Pub. L. 109-59, §11101(a)(1)(F), substituted “2011” for “2005”.

Subsec. (d)(2). Pub. L. 109-59, §11161(a)(4)(D), reenacted par. heading without change and amended text of introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The rates of tax specified in clauses (ii) and (iv) of subsection (a)(2)(A) shall be 4.3 cents per gallon—”.

Pub. L. 109-59, §11151(b)(2), amended par. heading and text of introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The rate of tax specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon—”.

Subsec. (d)(3). Pub. L. 109-58, §1362(a), substituted “2011” for “2005”.

Pub. L. 109-6 substituted “October 1, 2005” for “April 1, 2005”.

2004—Subsec. (a)(1)(B). Pub. L. 108-357, §860(a), inserted “by pipeline or vessel” after “transferred in bulk” and “, the operator of such pipeline or vessel,” after “the taxable fuel”.

Subsec. (a)(2)(A)(iv). Pub. L. 108-357, §853(a)(1), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 108-357, §853(a)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 108-357, §853(a)(3)(A), added par. (3).

Subsec. (a)(4). Pub. L. 108-357, §853(a)(4), added par. (4).

Subsec. (c). Pub. L. 108-357, §301(c)(7), struck out subsec. (c) which related to taxation of taxable fuels mixed with alcohol.

1998—Subsec. (c)(4)(A). Pub. L. 105-178, §9003(b)(2)(B), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: “The alcohol mixture rate for a qualified alcohol mixture which contains gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over—

“(i) 5.4 cents per gallon for 10 percent gasohol,

“(ii) 4.158 cents per gallon for 7.7 percent gasohol, and

“(iii) 3.078 cents per gallon for 5.7 percent gasohol. In the case of a mixture none of the alcohol in which consists of ethanol, clauses (i), (ii), and (iii) shall be applied by substituting ‘6 cents’ for ‘5.4 cents’, ‘4.62 cents’ for ‘4.158 cents’, and ‘3.42 cents’ for ‘3.078 cents’.”

Subsec. (c)(5). Pub. L. 105-178, §9003(b)(2)(C), substituted “the applicable blender rate (as defined in section 4041(b)(2)(C))” for “5.4 cents”.

Subsec. (c)(8). Pub. L. 105-178, §9003(a)(1)(C), substituted “2007” for “2000”.

Subsec. (d)(1). Pub. L. 105-178, §9002(a)(1)(F), substituted “2005” for “1999”.

1997—Subsec. (a)(2)(A)(iii). Pub. L. 105-34, §1032(b), inserted “or kerosene” after “diesel fuel”.

Subsec. (d)(1), (2). Pub. L. 105-2 added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) IN GENERAL.—On and after October 1, 1999, the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline) shall be 4.3 cents per gallon.

“(2) AVIATION GASOLINE.—On and after January 1, 1997, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon.”

Subsec. (d)(2)(B). Pub. L. 105-34, §1031(a)(2), substituted “September 30, 2007” for “September 30, 1997”.

Subsec. (d)(3). Pub. L. 105-34, §1033, substituted “shall apply after September 30, 1997, and before April 1, 2005” for “shall not apply after December 31, 1995”.

Pub. L. 105-2 struck out heading and text of par. (3) relating to aviation gasoline. Text read as follows: “After December 31, 1996, the rate of tax specified in subsection (a)(2)(A)(i) on aviation gasoline shall be 4.3 cents per gallon.”

1996—Subsec. (a)(2)(A). Pub. L. 104-188, §1609(g)(1), added cls. (i) and (ii), redesignated former cl. (ii) as (iii), and struck out former cl. (i) which read as follows: “in the case of gasoline, 18.3 cents per gallon, and”.

Subsec. (d)(1). Pub. L. 104-188, § 1609(a)(2)(B), (g)(4)(B), substituted “the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline)” for “each rate of tax specified in subsection (a)(2)(A)”.

Subsec. (d)(2), (3). Pub. L. 104-188, § 1609(a)(2)(A), (g)(2), added par. (3) relating to aviation gasoline, redesignated former par. (2), relating to leaking underground storage tank trust fund financing rate, as another par. (3), and added new par. (2) relating to aviation gasoline.

1993—Pub. L. 103-66, § 13242(a), amended section generally, substituting, in subsec. (a), provisions imposing tax on taxable fuels for provisions imposing tax on gasoline, in subsec. (b), provisions relating to treatment of removal or subsequent sale of taxable fuels by blender for provisions relating to treatment of removal or subsequent sale of gasoline by blender or compounder, in subsec. (c), provisions relating to taxable fuels mixed with alcohol for provisions relating to gasoline mixed with alcohol at refinery etc., in subsec. (d), provisions decreasing tax rate imposed on taxable fuels to 4.3 cents per gallon beginning on and after Oct. 1, 1999, for provisions terminating the Highway Trust Fund financing and deficit reduction rates on and after Oct. 1, 1999, and Oct. 1, 1995, respectively, and, in subsec. (e), “taxable fuel” for “gasoline” in two places.

Subsec. (a)(2)(B)(iii). Pub. L. 103-66, § 13241(a), amended cl. (iii) generally, substituting “6.8 cents per gallon” for “2.5 cents a gallon”.

1992—Subsec. (c)(1). Pub. L. 102-486, § 1920(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting rates which are 10/9th of the otherwise applicable rates in the case of the removal or sale of any gasoline for use in producing gasohol at the time of such removal or sale. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale. For purposes of this paragraph, the term ‘gasohol’ means any mixture of gasoline if at least 10 percent of such mixture is alcohol. For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon.”

Subsec. (c)(2). Pub. L. 102-486, § 1920(b)(1), substituted “an otherwise applicable rate” for “6.1 cents a gallon”.

Subsec. (c)(4). Pub. L. 102-486, § 1920(b)(2), substituted heading for one which read: “Lower rate on gasohol made other than from ethanol”, added text, and struck out former text which read as follows: “In the case of gasohol none of the alcohol in which consists of ethanol, paragraphs (1) and (2) shall be applied by substituting ‘5.5 cents’ for ‘6.1 cents’.”

1991—Subsec. (d)(1). Pub. L. 102-240 substituted “1999” for “1995”.

1990—Subsec. (a)(1). Pub. L. 101-508, § 11212(a), substituted heading for one which read: “In general” and amended text generally. Prior to amendment, text read as follows: “There is hereby imposed a tax at the rate specified in paragraph (2) on the earlier of—

“(A) the removal, or

“(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator.”

Subsec. (a)(2)(A)(iii). Pub. L. 101-508, § 11211(a)(1), added cl. (iii).

Subsec. (a)(2)(B)(i). Pub. L. 101-508, § 11211(a)(2)(A), substituted “11.5 cents” for “9 cents”.

Subsec. (a)(2)(B)(iii). Pub. L. 101-508, § 11211(a)(2)(B), (C), added cl. (iii).

Subsec. (a)(3). Pub. L. 101-508, § 11212(e)(2), struck out par. (3) which read as follows: “For purposes of paragraph (1), the bulk transfer of gasoline to a terminal operator by a refiner or importer shall not be considered a removal or sale of gasoline by such refiner or importer.”

Subsec. (c)(1). Pub. L. 101-508, § 11211(a)(5)(A), substituted “applied by substituting rates which are 10/9th

of the otherwise applicable rates” for “applied by substituting ‘3½ cents’ for ‘9 cents’ and by substituting ‘½ cent’ for ‘0.1 cent’” and inserted “For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon.”

Subsec. (c)(2). Pub. L. 101-508, § 11211(a)(5)(B), which directed the substitution of “at a Highway Trust Fund financing rate equivalent to 6.1 cents” for “at a rate equivalent to 3 cents”, was executed by making the substitution for “at a Highway Trust Fund financing rate equivalent to 3 cents” to reflect the probable intent of Congress. See 1986 Amendment note below.

Subsec. (c)(4). Pub. L. 101-508, § 11211(a)(5)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 101-508, § 11211(e)(3), substituted “2000” for “1993”.

Pub. L. 101-508, § 11211(a)(5)(C), redesignated par. (4) as (5).

Subsec. (d)(1). Pub. L. 101-508, § 11211(c)(3), substituted “1995” for “1993”.

Subsec. (d)(2). Pub. L. 101-508, § 11215(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after the earlier of—

“(i) December 31, 1991, or

“(ii) the last day of the termination month.

“(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues are at least \$500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091.

“(C) NET REVENUES.—For purposes of subparagraph (B), the term ‘net revenues’ means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits).”

Subsec. (d)(3). Pub. L. 101-508, § 11211(a)(3), added par. (3).

Subsec. (e). Pub. L. 101-508, § 11212(d)(1), added subsec. (e).

1988—Subsec. (a). Pub. L. 100-647, § 1017(c)(1)(A), added pars. (1) and (2), struck out former par. (1) which imposed a tax at the rate specified in subsec. (d) on the earlier of the removal, or the sale of gasoline by the refiner or importer thereof or the terminal operator, and redesignated former par. (2) as (3).

Subsec. (b)(1). Pub. L. 100-647, § 1017(c)(1)(B), substituted “subsection (a)” for “subsection (d)”.

Subsec. (c)(1). Pub. L. 100-647, § 6104(a), inserted after first sentence “Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale.”

Pub. L. 100-647, § 2001(d)(5)(A), inserted “and by substituting ‘½ cent’ for ‘0.1 cent’” before “in the case of the removal”.

Pub. L. 100-647, § 1017(c)(14), substituted “3½ cents” for “3 cents”.

Pub. L. 100-647, § 1017(c)(1)(B), substituted “subsection (a)” for “subsection (d)”.

Subsec. (c)(2). Pub. L. 100-647, § 2001(d)(5)(B), substituted “reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or sale of such fuel” for “5½ cents a gallon”.

Subsec. (d). Pub. L. 100-647, § 1017(c)(1)(D), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to the rate of tax.

Subsec. (d)(1). Pub. L. 100-647, § 1017(c)(1)(C)(i), substituted “subsection (a)(2)” for “subsection (d)(2)(A)”.

Subsec. (d)(2)(A). Pub. L. 100-647, § 1017(c)(1)(C)(ii), substituted “subsection (a)(2)” for “subsection (d)(2)(B)”.

Subsec. (e). Pub. L. 100-647, § 1017(c)(1)(D), redesignated subsec. (e) as (d).

1987—Subsec. (c)(4). Pub. L. 100-17, § 502(c)(2), substituted “September 30, 1993” for “December 31, 1992”.

Subsec. (e)(1). Pub. L. 100-17, § 502(a)(4), substituted “1993” for “1988”.

Subsec. (e)(2)(B). Pub. L. 100-203 substituted “net revenues are at least \$500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091.” for “net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least \$500,000,000.”

1986—Pub. L. 99-514 amended section generally, substituting provisions imposing a tax on the removal or sale of gasoline by the refiner, importer, blender, or compounder thereof or the terminal operator for provisions imposing a tax on gasoline sold by the producer or importer thereof, or by any producer of gasoline.

Subsec. (a). Pub. L. 99-499, § 521(a)(1)(B)(i), substituted “at the rate specified in subsection (d)” for “of 9 cents a gallon” in par. (1) as amended by Pub. L. 99-514.

Pub. L. 99-499, § 521(a)(1)(A)(i), amended subsec. (a), as in effect the day before Oct. 22, 1986, generally, substituting “at the rate specified in subsection (b)” for “of 9 cents a gallon”.

Subsec. (b). Pub. L. 99-499, § 521(a)(1)(B)(i), substituted “at the rate specified in subsection (d)” for “of 9 cents a gallon” in par. (1) as amended by Pub. L. 99-514.

Pub. L. 99-499, § 521(a)(1)(A)(i), amended subsec. (b), as in effect the day before Oct. 22, 1986, generally. Prior to amendment, subsec. (b), termination, read as follows: “On and after October 1, 1988, the taxes imposed by this section shall not apply.”

Subsec. (c)(1). Pub. L. 99-499, § 521(a)(1)(B)(iii)(I), substituted “subsection (d)” for “subsection (a)” in par. (1) as amended by Pub. L. 99-514.

Pub. L. 99-499, § 521(a)(1)(A)(iii), substituted “subsection (b)” for “subsection (a)” in introductory provisions as in effect the day before Oct. 22, 1986.

Subsec. (c)(2). Pub. L. 99-499, § 521(a)(1)(B)(iii)(II), substituted “a Highway Trust Fund financing rate” for “a rate” in par. (2) as amended by Pub. L. 99-514.

Pub. L. 99-499, § 521(a)(1)(A)(iii)(II), substituted “a Highway Trust Fund financing rate” for “a rate” in par. (2) as in effect the day before Oct. 22, 1986.

Subsec. (d). Pub. L. 99-499, § 521(a)(1)(B)(ii), added subsec. (d) to this section as amended by Pub. L. 99-514, and struck out former subsec. (d), termination, which read as follows: “On and after October 1, 1988, the taxes imposed by this section shall not apply.”

Pub. L. 99-499, § 521(a)(1)(A)(i), in amending this section as in effect the day before Oct. 22, 1986, added subsec. (d).

Subsec. (e). Pub. L. 99-499, § 521(a)(1)(B)(ii), added subsec. (e) to this section as amended by Pub. L. 99-514.

1984—Subsec. (c)(1). Pub. L. 98-369, § 912(b)(A), (B), substituted “3 cents” for “4 cents” in subpar. (A), and “3½ cents” for “4½ cents” in subpar. (B).

Pub. L. 98-369, § 732(a)(1), struck out “by substituting ‘4 cents’ for ‘9 cents’ in the case of the sale of any gasoline” after “shall be applied” in text preceding subpar. (A), substituted “by substituting ‘4 cents’ for ‘9 cents’ in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and” for “in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or” in subpar. (A), substituted “by substituting ‘4½ cents’ for ‘9 cents’ in the case of the sale of any gasoline for use in producing gasohol” for “for use in producing a mixture at least 10 percent of which is alcohol” in subpar. (B) and inserted definition of “gasohol” after subpar. (B).

Subsec. (c)(2). Pub. L. 98-369, § 912(b)(A), (C), substituted “3 cents” for “4 cents” and “5½ cents” for “4½ cents”.

Pub. L. 98-369, § 732(a)(2), substituted “at a rate equivalent to 4 cents a gallon” for “at a rate of 4 cents a gallon”, and “4½ cents a gallon” for “5 cents a gallon”.

Subsec. (c)(3). Pub. L. 98-369, § 912(f), substituted “coal (including peat)” for “coal”.

1983—Subsec. (a). Pub. L. 97-424, § 511(a)(1), increased tax from 4 to 9 cents a gallon.

Subsec. (b). Pub. L. 97-424, § 516(a)(3), substituted provision that, on and after Oct. 1, 1988, the taxes imposed by this section shall not apply, for provision that, on and after Oct. 1, 1984, the tax imposed by this section would be 1½ cents a gallon.

Subsec. (c)(1). Pub. L. 97-424, § 511(d)(1)(A), substituted “subsection (a) shall be applied by substituting ‘4 cents’ for ‘9 cents’ in the case of the sale of any gasoline” for “no tax shall be imposed by this section on the sale of any gasoline” after “Secretary.”

Subsec. (c)(2). Pub. L. 97-424, § 511(d)(1)(B), substituted “tax was imposed under subsection (a) at the rate of 4 cents a gallon by reason of this subsection” for “tax was not imposed by reason of this subsection” after “alcohol on which”, and inserted provision that the amount of tax imposed on any sale of such gasoline by such person shall be 5 cents a gallon.

1980—Subsec. (c)(2). Pub. L. 96-223, § 232(d)(3), inserted “(or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1))” after “this subsection”.

Subsec. (c)(3). Pub. L. 96-223, § 232(b)(3)(A), inserted provision that “alcohol” does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Subsec. (c)(4). Pub. L. 96-223, § 232(a)(1), added par. (4). 1978—Subsec. (b). Pub. L. 95-599 substituted “1984” for “1979”.

Subsec. (c). Pub. L. 95-618 added subsec. (c). 1976—Subsec. (b). Pub. L. 94-280 substituted “1979” for “1977”.

1970—Subsec. (b). Pub. L. 91-605 substituted “1977” for “1972”.

1961—Subsec. (a). Pub. L. 87-61, § 201(b), increased tax from 3 to 4 cents a gallon.

Subsec. (b). Pub. L. 87-61, § 201(c), substituted “October 1, 1972” for “July 1, 1972.”

Subsec. (c). Pub. L. 87-61, § 201(d), repealed subsec. (c) which authorized a temporary increase in tax for the period October 1, 1959, to July 1, 1961.

1959—Subsec. (c). Pub. L. 86-342 added subsec. (c). 1956—Act Mar. 29, 1956, substituted “April 1, 1957” for “April 1, 1956”.

Subsec. (a). Act June 29, 1956, redesignated first sentence as subsec. (a) and increased tax from 2 to 3 cents a gallon.

Subsec. (b). Act June 29, 1956, redesignated second sentence as subsec. (b) and substituted “July 1, 1972” for “April 1, 1956”.

1955—Act Mar. 30, 1955, substituted “April 1, 1956” for “April 1, 1955”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112-140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112-140, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as a note under section 4041 of this title.

Pub. L. 112-95, title XI, § 1101(c), Feb. 14, 2012, 126 Stat. 148, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on February 18, 2012.”

Pub. L. 112-91, § 2(c), Jan. 31, 2012, 126 Stat. 3, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on February 1, 2012.”

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 142(a)(1)(C), (2)(D) of Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

Pub. L. 112-30, title II, § 202(c), Sept. 16, 2011, 125 Stat. 357, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on September 17, 2011.”

Pub. L. 112-27, § 2(c), Aug. 5, 2011, 125 Stat. 270, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 23, 2011.”

Pub. L. 112-21, § 2(c), June 29, 2011, 125 Stat. 233, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 1, 2011.”

Pub. L. 112-16, § 2(c), May 31, 2011, 125 Stat. 218, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on June 1, 2011.”

Pub. L. 112-7, § 2(c), Mar. 31, 2011, 125 Stat. 31, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2011.”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-329, § 2(c), Dec. 22, 2010, 124 Stat. 3566, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on January 1, 2011.”

Pub. L. 111-249, § 2(c), Sept. 30, 2010, 124 Stat. 2627, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2010.”

Pub. L. 111-216, title I, § 101(c), Aug. 1, 2010, 124 Stat. 2349, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on August 2, 2010.”

Pub. L. 111-197, § 2(c), July 2, 2010, 124 Stat. 1353, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 4, 2010.”

Pub. L. 111-161, § 2(c), Apr. 30, 2010, 124 Stat. 1126, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on May 1, 2010.”

Pub. L. 111-153, § 2(c), Mar. 31, 2010, 124 Stat. 1084, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2010.”

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-116, § 2(c), Dec. 16, 2009, 123 Stat. 3031, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on January 1, 2010.”

Pub. L. 111-69, § 2(c), Oct. 1, 2009, 123 Stat. 2054, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2009.”

Pub. L. 111-12, § 2(c), Mar. 30, 2009, 123 Stat. 1457, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2009.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-330, § 2(c), Sept. 30, 2008, 122 Stat. 3717, provided that: “The amendments made by this section

[amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2008.”

Pub. L. 110-253, § 2(c), June 30, 2008, 122 Stat. 2417, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 1, 2008.”

Pub. L. 110-190, § 2(c), Feb. 28, 2008, 122 Stat. 643, provided that: “The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on March 1, 2008.”

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. K, title I, § 116(d), Dec. 26, 2007, 121 Stat. 2382, provided that: “The amendments made by this section [amending this section and sections 4261, 4271, and 9502 of this title] shall take effect on October 1, 2007.”

#### EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109-59, title XI, § 11151(f)(1), Aug. 10, 2005, 119 Stat. 1969, provided that: “The amendments made by subsections (a) and (b) [amending this section and sections 6421 and 6427 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which they relate.”

Amendment by section 11161(a)(1)-(4)(D) of Pub. L. 109-59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109-59, set out as a note under section 4041 of this title.

Pub. L. 109-59, title XI, § 11166(b)(2), Aug. 10, 2005, 119 Stat. 1977, provided that: “The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2005].”

Pub. L. 109-58, title XIII, § 1343(c), Aug. 8, 2005, 119 Stat. 1052, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall take effect on January 1, 2006.”

Amendment by section 1362(a) of Pub. L. 109-58 effective Oct. 1, 2005, see section 1362(d)(1) of Pub. L. 109-58, set out as a note under section 4041 of this title.

Pub. L. 109-6, § 1(b), Mar. 31, 2005, 119 Stat. 20, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 31, 2005].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(c)(7) of Pub. L. 108-357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108-357, set out as a note under section 40 of this title.

Amendment by section 853(a)(1)-(3)(A), (4) of Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

Pub. L. 108-357, title VIII, § 860(b), Oct. 22, 2004, 118 Stat. 1618, provided that: “The amendments made by this section [amending this section] shall take effect on March 1, 2005.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 9003(b)(2)(B), (C), of Pub. L. 105-178 effective Jan. 1, 2001, see section 9003(b)(3) of Pub. L. 105-178, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 1031(a)(2) of Pub. L. 105-34 effective Oct. 1, 1997, see section 1031(e)(1) of Pub. L. 105-34, set out as a note under section 4041 of this title.

Amendment by section 1032(b) of Pub. L. 105-34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105-34, as amended, set out as a note under section 4041 of this title.

Amendment by Pub. L. 105-2 applicable to periods beginning on or after the 7th day after Feb. 28, 1997, see section 2(e)(1) of Pub. L. 105-2, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104-188, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13241(a) of Pub. L. 103-66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103-66, set out as a note under section 4041 of this title.

Amendment by section 13242(a) of Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, §1920(c), Oct. 24, 1992, 106 Stat. 3027, provided that: “The amendments made by this section [amending this section] shall apply to gasoline removed (as defined in [former] section 4082 of the Internal Revenue Code of 1986) or entered after December 31, 1992.”

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11211(a)(1)–(3), (5)(A)–(C) of Pub. L. 101-508 applicable, except as otherwise provided, to gasoline removed (as defined in [former] section 4082 of this title) after Nov. 30, 1990, see section 11211(a)(6) of Pub. L. 101-508, set out as a note under section 4041 of this title.

Pub. L. 101-508, title XI, §11212(f), Nov. 5, 1990, 104 Stat. 1388-432, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4103 of this title and amending this section and sections 4093, 4101, 4222, 6103, 6416, and 6724 of this title] shall take effect on July 1, 1991.

“(2) REGISTRATION, ETC.—The amendments made by subsections (b), (c), and (e) (other than paragraph (2) thereof) [enacting section 4103 of this title and amending sections 4093, 4101, 4222, 6103, and 6724 of this title] shall take effect on December 1, 1990.”

Pub. L. 101-508, title XI, §11215(b), Nov. 5, 1990, 104 Stat. 1388-436, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on December 1, 1990.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(1), (14) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(5) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99-499, title V, to which it relates, see section 2001(e) of Pub. L. 100-647, set out as a note under section 56 of this title.

Pub. L. 100-647, title VI, §6104(b), Nov. 10, 1988, 102 Stat. 3711, provided that: “The amendment made by this section [amending this section] shall take effect on October 1, 1989.”

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100-203, set out as a note under section 40 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-514, title XVII, §1703(h), Oct. 22, 1986, 100 Stat. 2779, provided that: “The amendments made by this section [amending this section and sections 34, 4082, 4083, 4101, 4221, 6421, 6427, 7210, 7603 to 7605, 7609, and 7610 of this title and omitting section 4084 of this title] shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1987.”

Amendment by Pub. L. 99-499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99-499, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 732(a)(1), (2) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Amendment by section 912(b), (f) of Pub. L. 98-369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98-369, set out as a note under section 40 of this title.

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 511(a)(1), (d)(1) of Pub. L. 97-424 effective Apr. 1, 1983, see section 511(h)(1) of Pub. L. 97-424, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 232(b)(3)(A) of Pub. L. 96-223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as an Effective Date note under section 40 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-618, title II, §221(a)(2), Nov. 9, 1978, 92 Stat. 3185, as amended by Pub. L. 96-223, title II, §232(a)(3), Apr. 2, 1980, 94 Stat. 273, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to sales after December 31, 1978.”

## EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-61 effective July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

## LIST OF AIRPORTS WITH SECURED TERMINALS

Pub. L. 108-357, title VIII, §853(a)(3)(B), Oct. 22, 2004, 118 Stat. 1610, provided that: “Not later than December 15, 2004, the Secretary of the Treasury shall publish and maintain a list of airports which include a secured area in which a terminal is located (within the meaning of section 4081(a)(3)(A)(i) of the Internal Revenue Code of 1986, as added by this paragraph).”

## DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Due date for deposit of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 901(e) of Pub. L. 105-34, set out as a note under section 6302 of this title.

## DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposit of taxes imposed by subsec. (a)(2)(A)(ii) of this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105-34, set out as a note under section 6302 of this title.

## MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION

Pub. L. 109-59, title XI, §11141, Aug. 10, 2005, 119 Stat. 1959, provided that:

“(a) ESTABLISHMENT.—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the ‘Commission’).

“(b) FUNCTION.—The Commission shall—

“(1) review motor fuel revenue collections, historical and current;

“(2) review the progress of investigations with respect to motor fuel taxes;

“(3) develop and review legislative proposals with respect to motor fuel taxes;

“(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

“(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

“(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

“(7) evaluate and make recommendations to the President and Congress regarding—

“(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

“(B) enforcement personnel allocation, and

“(C) proposals for regulatory projects, legislation, and funding.

“(c) MEMBERSHIP.—

“(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

“(A) At least one representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation—Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

“(B) At least one representative from the Federation of State Tax Administrators.

“(C) At least one representative from any State department of transportation.

“(D) Two representatives from the highway construction industry.

“(E) Six representatives from industries relating to fuel distribution—refiners (two representatives), distributors (one representative), pipelines (one representative), and terminal operators (two representatives).

“(F) One representative from the retail fuel industry.

“(G) Two representatives from the staff of the Committee on Finance of the Senate and two representatives from the staff of the Committee on Ways and Means of the House of Representatives.

“(2) TERMS.—Members shall be appointed for the life of the Commission.

“(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(4) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(5) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

“(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust fund for the expenses of the Commission.

“(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury and the Internal Revenue Service shall be available for consultation to assist the Commission in carrying out its duties under this section.

“(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

“(g) TERMINATION.—The Commission shall terminate as of the close of September 30, 2009.”

## FLOOR STOCKS TAXES

Pub. L. 108-357, title VIII, §853(f), Oct. 22, 2004, 118 Stat. 1614, provided that:

“(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on January 1, 2005, by any person a tax equal to—

“(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section [amending this section and sections 4041, 4082, 4083, 4101, 4103, 4221, 6206, 6416, 6427, 6724, 9502, and 9508 of this title, redesignating subpart C of part III of subchapter A of chapter 32 of this title as subpart B of part III of subchapter A of chapter 32 of this title, and repealing former subpart B of part III of subchapter A of chapter 32 of this title] been in effect at all times before such date, reduced by

“(B) the sum of—

“(i) the tax imposed before such date on such kerosene under section 4091 of the Internal Revenue Code of 1986, as in effect on such date, and

“(ii) in the case of kerosene held exclusively for such person's own use, the amount which such person would (but for this clause) reasonably expect (as of such date) to be paid as a refund under section 6427(l) of such Code with respect to such kerosene.

“(2) EXCEPTION FOR FUEL HELD IN AIRCRAFT FUEL TANK.—Paragraph (1) shall not apply to kerosene held in the fuel tank of an aircraft on January 1, 2005.

“(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

“(A) LIABILITY FOR TAX.—The person holding the kerosene on January 1, 2005, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

“(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

“(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

“(A) in any case in which tax was not imposed by section 4091 of such Code, at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

“(B) at the rate under section 4081(a)(2)(A)(iv) of such Code to the extent of the remainder.

“(5) HELD BY A PERSON.—For purposes of this subsection, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

“(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.”

Pub. L. 105-34, title X, §1032(g), Aug. 5, 1997, 111 Stat. 936, provided that:

“(1) IMPOSITION OF TAX.—In the case of kerosene which is held on July 1, 1998, by any person, there is hereby imposed a floor stocks tax of 24.4 cents per gallon.

“(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

“(A) LIABILITY FOR TAX.—A person holding kerosene on July 1, 1998, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

“(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 31, 1998.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) HELD BY A PERSON.—Kerosene shall be considered as ‘held by a person’ if title thereto has passed



to such person (whether or not delivery to the person has been made).

“(B) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to kerosene held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of the Internal Revenue Code of 1986 is allowable for such use.

“(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on kerosene held in the tank of a motor vehicle or motorboat.

“(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

“(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on kerosene held on July 1, 1998, by any person if the aggregate amount of kerosene held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

“(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

“(C) CONTROLLED GROUPS.—For purposes of this paragraph—

“(i) CORPORATIONS.—

“(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

“(II) CONTROLLED GROUP.—The term ‘controlled group’ has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase ‘more than 50 percent’ shall be substituted for the phrase ‘at least 80 percent’ each place it appears in such subsection.

“(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

“(7) COORDINATION WITH SECTION 4081.—No tax shall be imposed by paragraph (1) on kerosene to the extent that tax has been (or will be) imposed on such kerosene under section 4081 or 4091 of such Code.

“(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.”

Pub. L. 105-2, §2(d), Feb. 28, 1997, 111 Stat. 6, provided that:

“(1) IMPOSITION OF TAX.—In the case of any aviation liquid on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before the tax effective date and which is held on such date by any person, there is hereby imposed a floor stocks tax of—

“(A) 15 cents per gallon in the case of aviation gasoline, and

“(B) 17.5 cents per gallon in the case of aviation fuel.

“(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

“(A) LIABILITY FOR TAX.—A person holding, on the tax effective date, any aviation liquid to which the tax imposed by paragraph (1) applies shall be liable for such tax.

“(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the first day of the 5th month beginning after the tax effective date.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) TAX EFFECTIVE DATE.—The term ‘tax effective date’ means the date which is 7 days after the date of the enactment of this Act [Feb. 28, 1997].

“(B) AVIATION LIQUID.—The term ‘aviation liquid’ means aviation gasoline and aviation fuel.

“(C) AVIATION GASOLINE.—The term ‘aviation gasoline’ has the meaning given such term in section 4081 of such Code.

“(D) AVIATION FUEL.—The term ‘aviation fuel’ has the meaning given such term by section 4093 of such Code.

“(E) HELD BY A PERSON.—Aviation liquid shall be considered as ‘held by a person’ if title thereto has passed to such person (whether or not delivery to the person has been made).

“(F) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or the Secretary’s delegate.

“(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to—

“(A) aviation liquid held by any person on the tax effective date exclusively for any use for which a credit or refund of the entire tax imposed by section 4081 or 4091 of such Code (as the case may be) is allowable for such liquid purchased on or after such tax effective date for such use, or

“(B) aviation fuel held by any person on the tax effective date exclusively for any use described in section 4092(b) of such Code.

“(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

“(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation liquid held on the tax effective date by any person if the aggregate amount of such liquid (determined separately for aviation gasoline and aviation fuel) held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

“(B) EXEMPT FUEL.—Any liquid to which the tax imposed by paragraph (1) does not apply by reason of paragraph (4) shall not be taken into account under subparagraph (A).

“(C) CONTROLLED GROUPS.—For purposes of this paragraph—

“(i) CORPORATIONS.—

“(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

“(II) CONTROLLED GROUP.—The term ‘controlled group’ has the meaning given such term by subsection (a) of section 1563 of such Code; except that for such purposes, the phrase ‘more than 50 percent’ shall be substituted for the phrase ‘at least 80 percent’ each place it appears in such subsection.

“(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

“(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091, as the case may be.”

Pub. L. 103-66, title XIII, §13241(h), Aug. 10, 1993, 107 Stat. 512, provided that:

“(1) IMPOSITION OF TAX.—In the case of gasoline, diesel fuel, and aviation fuel on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before October 1, 1993, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon on such gasoline, diesel fuel, and aviation fuel.

“(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

“(A) LIABILITY FOR TAX.—A person holding gasoline, diesel fuel, or aviation fuel on October 1, 1993, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

“(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before November 30, 1993.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) HELD BY A PERSON.—Gasoline, diesel fuel, and aviation fuel shall be considered as ‘held by a person’ if title thereto has passed to such person (whether or not delivery to the person has been made).

“(B) GASOLINE.—The term ‘gasoline’ has the meaning given such term by section 4082 [see section 4083] of such Code.

“(C) DIESEL FUEL.—The term ‘diesel fuel’ has the meaning given such term by section 4092 [see section 4083] of such Code.

“(D) AVIATION FUEL.—The term ‘aviation fuel’ has the meaning given such term by section 4092 [see section 4093] of such Code.

“(E) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline, diesel fuel, or aviation fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

“(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

“(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

“(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

“(i) on gasoline held on October 1, 1993, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

“(ii) on diesel fuel or aviation fuel held on October 1, 1993, by any person if the aggregate amount of diesel fuel or aviation fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

“(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

“(C) CONTROLLED GROUPS.—For purposes of this paragraph—

“(i) CORPORATIONS.—

“(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

“(II) CONTROLLED GROUP.—The term ‘controlled group’ has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase ‘more than 50 percent’ shall be substituted for the phrase ‘at least 80 percent’ each place it appears in such subsection.

“(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

“(7) OTHER LAW APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel and aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.”

Pub. L. 103-66, title XIII, §13243, Aug. 10, 1993, 107 Stat. 529, provided that:

“(a) IN GENERAL.—There is hereby imposed a floor stocks tax on diesel fuel held by any person on January 1, 1994, if—

“(1) no tax was imposed on such fuel under section 4041(a) or 4091 of the Internal Revenue Code of 1986 as in effect on December 31, 1993, and

“(2) tax would have been imposed by section 4081 of such Code, as amended by this Act, on any prior removal, entry, or sale of such fuel had such section 4081 applied to such fuel for periods before January 1, 1994.

“(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

“(c) LIABILITY AND PAYMENT OF TAX.—

“(1) LIABILITY FOR TAX.—A person holding the diesel fuel on January 1, 1994, to which the tax imposed by this section applies shall be liable for such tax.

“(2) METHOD OF PAYMENT.—The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

“(3) TIME FOR PAYMENT.—The tax imposed by this section shall be paid on or before July 31, 1994.

“(d) DEFINITIONS.—For purposes of this section—

“(1) DIESEL FUEL.—The term ‘diesel fuel’ has the meaning given such term by section 4083(a) of such Code.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(e) EXCEPTIONS.—

“(1) PERSONS ENTITLED TO CREDIT OR REFUND.—The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

“(2) COMPLIANCE WITH DYEING REQUIRED.—Paragraph (1) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dyeing and marking such fuel.

“(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081.”

Pub. L. 101-508, title XI, §1121(j), Nov. 5, 1990, 104 Stat. 1388-428, imposed a floor stocks tax on (A) gasoline and diesel fuel on which tax was imposed under section 4081 or 4091 of this title before Dec. 1, 1990, and which was held on such date by any person, or (B) diesel fuel on which no tax was imposed under section 4091 of this title at the Highway Trust Fund financing rate before Dec. 1, 1990, and which was held on such date by any person for use as fuel in a train.

Pub. L. 99-514, title XVII, §1703(f), Oct. 22, 1986, 100 Stat. 2778, as amended by Pub. L. 100-647, title I, §1017(c)(13), title II, §2001(d)(4), Nov. 10, 1988, 102 Stat. 3577, 3595, imposed a floor stocks tax at the rate of 9.1 cents per gallon on gasoline subject to tax under section 4081 of this title which, on Jan. 1, 1988, was held by a dealer for sale, and with respect to which no tax had been imposed under such section.

#### STUDY OF EVASION OF GASOLINE TAX

Pub. L. 99-514, title XVII, §1703(g), Oct. 22, 1986, 100 Stat. 2778, directed Secretary of the Treasury or his delegate to conduct a study of incidence of evasion of gasoline tax, with report of the study to be submitted, not later than Dec. 31, 1986, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

#### EXTENSION OF PAYMENT DUE DATE FOR CERTAIN FUEL TAXES

Pub. L. 97-424, title V, §518, Jan. 6, 1983, 96 Stat. 2184, as amended by Pub. L. 98-369, div. A, title VII, §734(i),

July 18, 1984, 98 Stat. 980; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) 14-DAY EXTENSION.—The Secretary shall prescribe regulations which permit any qualified person whose liability for tax under section 4081 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is payable with respect to semi-monthly periods to pay such tax on or before the day which is 14 days after the close of such semi-monthly period if such payment is made by wire transfer to, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, any Federal Reserve Bank.

“(b) QUALIFIED PERSON DEFINED.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified person’ means—

“(A) any person other than any person whose average daily production of crude oil for the preceding calendar quarter exceeds 1,000 barrels, and

“(B) any independent refiner (within the meaning of section 4995(b)(4) of such Code).

“(2) AGGREGATION RULES.—For purposes of paragraph (1), in determining whether any person’s production exceeds 1,000 barrels per day, rules similar to the rules of section 4992(e) of the Internal Revenue Code of 1986 shall apply.

“(c) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subsection, the due date under subsection (a) would fall on a Saturday, Sunday, or a holiday in the District of Columbia, such due date shall be deemed to be the immediately preceding day which is not a Saturday, Sunday, or such a holiday.”

#### STUDY BY SECRETARY OF THE TREASURY; REPORT TO CONGRESS

Study respecting portion of taxes imposed by this section is attributable to fuel used in recreational motorboats and report to Congress no later than 2 years after Oct. 14, 1980, see Pub. L. 96-451, title II, §204, Oct. 14, 1980, 94 Stat. 1988, set out as a note under section 4041 of this title.

#### EXPEDITION OF CERTAIN ETHANOL PRODUCTION APPLICATIONS

Pub. L. 95-618, title II, §221(d), Nov. 9, 1978, 92 Stat. 3186, directed Secretary of the Treasury to expedite applications submitted by persons with respect to the production of ethanol for use in producing gasoline and that the Secretary develop expeditious procedures for processing such applications, prior to repeal by Pub. L. 96-223, §232(e)(2)(E), Apr. 2, 1980, 94 Stat. 280.

### § 4082. Exemptions for diesel fuel and kerosene

#### (a) In general

The tax imposed by section 4081 shall not apply to diesel fuel and kerosene—

(1) which the Secretary determines is destined for a nontaxable use,

(2) which is indelibly dyed by mechanical injection in accordance with regulations which the Secretary shall prescribe, and

(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Such regulations shall allow an individual choice of dye color approved by the Secretary or chosen from any list of approved dye colors that the Secretary may publish.

#### (b) Nontaxable use

For purposes of this section, the term “nontaxable use” means—

(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

(2) any use in a train, and

(3) any use described in section 4041(a)(1)(C)(iii)(II).

The term “nontaxable use” does not include the use of kerosene in an aircraft and such term shall not include any use described in section 6421(e)(2)(C).

#### (c) Exception to dyeing requirements

Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel and kerosene—

(1) removed, entered, or sold in a State for ultimate sale or use in an area of such State during the period such area is exempted from the fuel dyeing requirements under subsection (i) of section 211 of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection (i) (as so in effect), and

(2) the use of which is certified pursuant to regulations issued by the Secretary.

#### (d) Additional exceptions to dyeing requirements for kerosene

##### (1) Use for non-fuel feedstock purposes

Subsection (a)(2) shall not apply to kerosene—

(A) received by pipeline or vessel for use by the person receiving the kerosene in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section 4041), or

(B) to the extent provided in regulations, removed or entered—

(i) for such a use by the person removing or entering the kerosene, or

(ii) for resale by such person for such a use by the purchaser,

but only if the person receiving, removing, or entering the kerosene and such purchaser (if any) are registered under section 4101 with respect to the tax imposed by section 4081.

##### (2) Wholesale distributors

To the extent provided in regulations, subsection (a)(2) shall not apply to kerosene received by a wholesale distributor of kerosene if such distributor—

(A) is registered under section 4101 with respect to the tax imposed by section 4081 on kerosene, and

(B) sells kerosene exclusively to ultimate vendors described in section 6427(l)(5)(B) with respect to kerosene.

#### (e) Kerosene removed into an aircraft

In the case of kerosene (other than kerosene with respect to which tax is imposed under section 4043) which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft—

(1) the rate of tax under section 4081(a)(2)(A)(iii) shall be zero, and

(2) if such aircraft is employed in foreign trade or trade between the United States and any of its possessions, the increase in such rate under section 4081(a)(2)(B) shall be zero.

For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated

as a removal from a terminal but only if such terminal is located within a secure area of an airport.

**(f) Exception for Leaking Underground Storage Tank Trust Fund financing rate**

**(1) In general**

Subsection (a) shall not apply to the tax imposed under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

**(2) Exception for export, etc.**

Paragraph (1) shall not apply with respect to any fuel if the Secretary determines that such fuel is destined for export or for use by the purchaser as supplies for vessels (within the meaning of section 4221(d)(3)) employed in foreign trade or trade between the United States and any of its possessions.

**(g) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel and kerosene pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

**(h) Cross reference**

**For tax on train and certain bus uses of fuel purchased tax-free, see subsections (a)(1) and (d)(3) of section 4041.**

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Pub. L. 86-342, title II, §201(e)(1), (2), Sept. 21, 1959, 73 Stat. 615; Pub. L. 89-44, title VIII, §802(a)(1), (b)(1), June 21, 1965, 79 Stat. 159; Pub. L. 91-258, title II, §205(c)(6), May 21, 1970, 84 Stat. 242; Pub. L. 98-369, div. A, title VII, §§733(a), 734(c)(1), July 18, 1984, 98 Stat. 977, 979; Pub. L. 99-514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2775; Pub. L. 103-66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 517; Pub. L. 104-188, title I, §1801(a), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 105-34, title X, §1032(c)(1), (2), (e)(3)(A), Aug. 5, 1997, 111 Stat. 933, 935; Pub. L. 105-206, title VI, §6010(h)(3), (4), July 22, 1998, 112 Stat. 815; Pub. L. 108-357, title II, §241(a)(2)(B), title VIII, §§851(d)(2), 853(a)(5), 854(a), 857(a), Oct. 22, 2004, 118 Stat. 1438, 1608, 1611, 1615, 1617; Pub. L. 109-58, title XIII, §1362(b)(1), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109-59, title XI, §11161(a)(4)(A), (E), (b)(3)(C), Aug. 10, 2005, 119 Stat. 1970, 1971; Pub. L. 109-432, div. A, title IV, §420(b)(2), Dec. 20, 2006, 120 Stat. 2969; Pub. L. 110-172, §§6(d)(2)(B), (C), 11(a)(28), Dec. 29, 2007, 121 Stat. 2480, 2481, 2487; Pub. L. 112-95, title XI, §1103(a)(2), Feb. 14, 2012, 126 Stat. 150.)

REFERENCES IN TEXT

Subsection (i) of section 211 of the Clean Air Act, referred to in subsec. (c)(1), is classified to section 7545(i) of Title 42, The Public Health and Welfare.

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 104-188, which was approved Aug. 20, 1996.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112-95 inserted “(other than kerosene with respect to which tax is imposed under section 4043)” after “In the case of kerosene” in introductory provisions.

2007—Subsec. (a). Pub. L. 110-172, §6(d)(2)(B)(i), struck out “(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)” after “section 4081” in introductory provisions.

Subsec. (b). Pub. L. 110-172, §11(a)(28), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘nontaxable use’ means—

“(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

“(2) any use in a train, and

“(3) any use described in section 4041(a)(1)(C)(iii)(II).

The term ‘nontaxable use’ does not include the use of kerosene in an aircraft and such term shall not include any use described in section 6421(e)(2)(C).” See 2004 Amendment notes below.

Subsec. (e). Pub. L. 110-172, §6(d)(2)(C)(ii), designated last sentence as concluding provisions.

Pub. L. 110-172, §6(d)(2)(C)(i), substituted “an aircraft—” and pars. (1) and (2) for “an aircraft, the rate of tax under section 4081(a)(2)(A)(iii) shall be zero.”

Subsecs. (f) to (h). Pub. L. 110-172, §6(d)(2)(B)(ii), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2006—Subsec. (d)(2)(B). Pub. L. 109-432 substituted “6427(l)(5)(B)” for “6427(l)(6)(B)”.

2005—Subsec. (a). Pub. L. 109-58 inserted “(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)” after “section 4081” in introductory provisions.

Subsec. (b). Pub. L. 109-59, §11161(a)(4)(A), struck out “aviation-grade” before “kerosene” in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 109-59, §11161(b)(3)(C), substituted “section 6427(l)(6)(B)” for “section 6427(l)(5)(B)”.

Subsec. (e). Pub. L. 109-59, §11161(a)(4)(E), in heading substituted “Kerosene removed into an aircraft” for “Aviation-grade kerosene” and in text struck out “aviation-grade” before “kerosene”, substituted “section 4081(a)(2)(A)(iii)” for “section 4081(a)(2)(A)(iv)”, and inserted at end “For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.”

2004—Subsec. (a)(2). Pub. L. 108-357, §854(a), inserted “by mechanical injection” after “indelibly dyed”.

Subsec. (b). Pub. L. 108-357, §853(a)(5)(B)(i), inserted at end “The term ‘nontaxable use’ does not include the use of aviation-grade kerosene in an aircraft.”

Pub. L. 108-357, §851(d)(2), which directed amendment of subsec. (b) by inserting “and such term shall not include any use described in section 6421(e)(2)(C)” before period at end, was executed by making the insertion after amendment by Pub. L. 108-357, §853(a)(5)(B)(i), to reflect the probable intent of Congress. See above.

Subsec. (b)(3). Pub. L. 108-357, §857(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “any use described in section 6427(b)(1) (after the application of section 6427(b)(3)).”

Subsec. (d). Pub. L. 108-357, §853(a)(5)(B)(ii), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out heading and text of former par. (1). Text read as follows: “Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft.”

Subsec. (e). Pub. L. 108-357, §853(a)(5)(A), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 108-357, §853(a)(5)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108-357, §853(a)(5)(A), redesignated subsec. (f) as (g).

Pub. L. 108-357, §241(a)(2)(B), which directed substitution of “subsections (a)(1) and (d)(3) of section 4041” for “section 4041(a)(1)” in subsec. (f), was executed by

making the substitution in subsec. (g) to reflect the probable intent of Congress and the amendment by Pub. L. 108-357, §853(a)(5)(A). See Amendment note above and Effective Date of 2004 Amendment notes below.

1998—Subsec. (d)(1). Pub. L. 105-206, §6010(h)(3), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: “Subsection (a)(2) shall not apply to a removal, entry, or sale of aviation-grade kerosene (as determined under regulations prescribed by the Secretary) if the person receiving the kerosene is registered under section 4101 with respect to the tax imposed by section 4091.”

Subsec. (d)(3). Pub. L. 105-206, §6010(h)(4), substituted “kerosene received by” for “a removal, entry, or sale of kerosene to” in introductory provisions.

1997—Pub. L. 105-34, §1032(e)(3)(A), inserted “and kerosene” after “diesel fuel” in section catchline.

Subsecs. (a), (c). Pub. L. 105-34, §1032(c)(1), substituted “diesel fuel and kerosene” for “diesel fuel” in introductory provisions.

Subsec. (d). Pub. L. 105-34, §1032(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 105-34, §1032(c)(1), substituted “diesel fuel and kerosene” for “diesel fuel”.

Subsecs. (e), (f). Pub. L. 105-34, §1032(c)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsecs. (c) to (e). Pub. L. 104-188 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1993—Pub. L. 103-66 amended heading and text generally. Prior to amendment, text read as follows:

“(a) GASOLINE.—For purposes of this subpart, the term ‘gasoline’ includes, to the extent prescribed in regulations—

“(1) gasoline blend stocks, and

“(2) products commonly used as additives in gasoline.

For purposes of paragraph (1), the term ‘gasoline blend stocks’ means any petroleum product component of gasoline.

“(b) CERTAIN USES DEFINED AS REMOVAL.—If a refiner, importer, terminal operator, blender, or compounder uses (other than in the production of gasoline or special fuels referred to in section 4041) gasoline refined, imported, blended, or compounded by him, such use shall for the purposes of this chapter be considered a removal.”

1986—Subsec. (a). Pub. L. 99-514 amended subsec. (a) generally, substituting definitions of “gasoline” and “gasoline blended stocks” for definition of “producer”.

Subsec. (b). Pub. L. 99-514 amended subsec. (b) generally, substituting provisions that certain use of gasoline be considered removal for provisions defining “gasoline”.

Subsecs. (c) to (e). Pub. L. 99-514, in amending section generally, struck out subsecs. (c) to (e) which defined “sales”, “wholesale distributor”, and “producer”, respectively.

1984—Subsec. (d). Pub. L. 98-369, §733(a), in amending subsec. (d) generally, redesignated existing provisions of par. (1) as subpar. (A) and added subpar. (B), and in par. (2) inserted “but only if such person” before “elects”.

Subsec. (e). Pub. L. 98-369, §734(c)(1), added subpar. (e).

1970—Subsec. (c). Pub. L. 91-258 substituted “special fuels referred to in section 4041” for “special motor fuels referred to in section 4041(b)”.

1965—Subsec. (b). Pub. L. 89-44, §802(a)(1), substituted “gasoline which are suitable for use as a motor fuel” for “gasoline (including casinghead and natural gasoline”.

Subsec. (d)(2). Pub. L. 89-44, §802(b)(1), struck out “and give a bond” after “elects to register”.

1959—Subsec. (a). Pub. L. 86-342, §201(e)(1), inserted reference to wholesale distributor.

Subsec. (d). Pub. L. 86-342, §201(e)(2), added subsec. (d).

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-95 applicable to fuel used after Mar. 31, 2012, see section 1103(d)(1) of Pub. L.

112-95, set out as an Effective Date note under section 4043 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendments by section 6(d)(2)(B), (C)(i) of Pub. L. 110-172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendments relate, and amendment by section 6(d)(2)(C)(ii) of Pub. L. 110-172 effective as if included in section 11161 of the SAFETEA-LU, Pub. L. 109-59, see section 6(e) of Pub. L. 110-172, set out as a note under section 30C of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to kerosene sold after Sept. 30, 2005, with special rule for pending claims, see section 420(c) of Pub. L. 109-432, set out as a note under section 6427 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109-59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109-59, set out as a note under section 4041 of this title.

Amendment by Pub. L. 109-58 effective Oct. 1, 2005, and applicable to fuel entered, removed, or sold after Sept. 30, 2005, see section 1362(d) of Pub. L. 109-58, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 241(a)(2)(B) of Pub. L. 108-357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108-357, set out as a note under section 4041 of this title.

Pub. L. 108-357, title VIII, §851(d)(4), Oct. 22, 2004, 118 Stat. 1609, provided that: “The amendments made by this subsection [amending this section and sections 6421 and 6427 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].”

Amendment by section 853(a)(5) of Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

Pub. L. 108-357, title VIII, §854(d), Oct. 22, 2004, 118 Stat. 1616, provided that: “The amendments made by subsections (a) and (c) [enacting section 6715A of this title and amending this section] shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b) [set out as a note below] [Such regulations were issued effective Oct. 24, 2005. See 70 F.R. 21332.]”

Pub. L. 108-357, title VIII, §857(d), Oct. 22, 2004, 118 Stat. 1617, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold after December 31, 2004.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105-34, as amended, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1801(b), Aug. 20, 1996, 110 Stat. 1892, provided that: “The amendments made by this section [amending this section] shall apply with respect to fuel removed, entered, or sold on or after the first day of the first calendar quarter beginning after the date of the enactment of this Act [Aug. 20, 1996].”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title VII, §733(b), July 18, 1984, 98 Stat. 977, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984].”

Pub. L. 98-369, div. A, title VII, §734(c)(3), July 18, 1984, 98 Stat. 979, provided that: “The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984].”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, §802(d)(1), June 21, 1965, 79 Stat. 159, provided that: “The amendments made by subsections (a)(1), (b), and (c) [amending this section and sections 4101, 4222, 7103, and 7232 of this title] shall apply with respect to articles sold on or after July 1, 1965.”

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-342, title II, §201(e)(3), Sept. 21, 1959, 73 Stat. 615, provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on January 1, 1960.”

REGULATIONS

Pub. L. 108-357, title VIII, §854(b), Oct. 22, 2004, 118 Stat. 1615, provided that: “Not later than 180 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a) [amending this section], and such regulations shall include standards for making such systems tamper resistant.”

**§ 4083. Definitions; special rule; administrative authority**

**(a) Taxable fuel**

For purposes of this subpart—

**(1) In general**

The term “taxable fuel” means—

- (A) gasoline,
- (B) diesel fuel, and
- (C) kerosene.

**(2) Gasoline**

The term “gasoline”—

(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

(B) includes, to the extent prescribed in regulations—

- (i) any gasoline blend stock, and
- (ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term “gasoline blend stock” means any petroleum product component of gasoline.

**(3) Diesel fuel**

**(A) In general**

The term “diesel fuel” means—

- (i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,
- (ii) transmix, and
- (iii) diesel fuel blend stocks identified by the Secretary.

**(B) Transmix**

For purposes of subparagraph (A), the term “transmix” means a byproduct of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.

**(b) Commercial aviation**

For purposes of this subpart, the term “commercial aviation” means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of subsection (h) or (i) of section 4261. Such term shall not include the use of any aircraft before April 1, 2018, if tax is imposed under section 4043 with respect to the fuel consumed in such use or if no tax is imposed on such use under section 4043 by reason of subsection (c)(5) thereof.

**(c) Certain uses defined as removal**

If any person uses taxable fuel (other than in the production of taxable fuels or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

**(d) Administrative authority**

**(1) In general**

In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

- (i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel,
- (ii) taking and removing samples of such fuel, and
- (iii) inspecting any books and records and any shipping papers pertaining to such fuel, and

(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

**(2) Inspection sites**

The Secretary may establish inspection sites for purposes of carrying out the Secretary’s authority under paragraph (1)(B).

**(3) Penalty for refusal of entry**

**(A) Forfeiture**

The penalty provided by section 7342 shall apply to any refusal to admit entry or other

refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting “\$1,000” for “\$500” for each such refusal.

**(B) Assessable penalty**

For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 103-66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 517; Pub. L. 105-34, title IX, §902(b)(3), title X, §1032(a), (e)(4), Aug. 5, 1997, 111 Stat. 873, 933, 935; Pub. L. 105-206, title VI, §6010(h)(1), July 22, 1998, 112 Stat. 815; Pub. L. 108-357, title III, §301(c)(8), title VIII, §§853(b), 858(a), 859(b)(1), 870(a), Oct. 22, 2004, 118 Stat. 1461, 1611, 1617, 1618, 1623; Pub. L. 109-59, title XI, §11123(b), Aug. 10, 2005, 119 Stat. 1952; Pub. L. 112-95, title XI, §1103(b), Feb. 14, 2012, 126 Stat. 151; Pub. L. 114-55, title II, §202(c)(1), Sept. 30, 2015, 129 Stat. 525; Pub. L. 114-141, title II, §202(c)(1), Mar. 30, 2016, 130 Stat. 324; Pub. L. 114-190, title I, §1202(c)(1), July 15, 2016, 130 Stat. 619; Pub. L. 115-63, title II, §202(c)(1), Sept. 29, 2017, 131 Stat. 1171.)

**AMENDMENTS**

2017—Subsec. (b). Pub. L. 115-63 substituted “April 1, 2018” for “October 1, 2017”.

2016—Subsec. (b). Pub. L. 114-190 substituted “October 1, 2017” for “July 16, 2016”.

Pub. L. 114-141 substituted “July 16, 2016” for “April 1, 2016”.

2015—Subsec. (b). Pub. L. 114-55 substituted “April 1, 2016” for “October 1, 2015”.

2012—Subsec. (b). Pub. L. 112-95 inserted at end “Such term shall not include the use of any aircraft before October 1, 2015, if tax is imposed under section 4043 with respect to the fuel consumed in such use or if no tax is imposed on such use under section 4043 by reason of subsection (c)(5) thereof.”

2005—Subsec. (b). Pub. L. 109-59 substituted “subsection (h) or (i) of section 4261” for “section 4261(h)”.

2004—Subsec. (a)(2). Pub. L. 108-357, §301(c)(8), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, par. (2) defined the term “gasoline”, to the extent prescribed in regulations, as including gasoline blend stocks and products commonly used as additives in gasoline, and defined the term “gasoline blend stock” as meaning any petroleum product component of gasoline.

Subsec. (a)(3). Pub. L. 108-357, §870(a), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) defined the term “diesel fuel” as meaning any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

Subsecs. (b), (c). Pub. L. 108-357, §853(b), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 108-357, §853(b), redesignated subsec. (c) as (d).

Subsec. (d)(1)(A)(iii). Pub. L. 108-357, §858(a), added cl. (iii).

Subsec. (d)(3). Pub. L. 108-357, §859(b)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1998—Subsec. (a)(1). Pub. L. 105-206 made technical amendment to directory language of Pub. L. 105-34, §1032(a). See 1997 Amendment note below.

1997—Subsec. (a)(1)(C). Pub. L. 105-34, §1032(a), as amended by Pub. L. 105-206, §6010(h)(1), added subpar. (C).

Subsec. (a)(3). Pub. L. 105-34, §902(b)(3), substituted “or a diesel-powered train” for “a diesel-powered train, or a diesel-powered boat”.

Subsec. (b). Pub. L. 105-34, §1032(e)(4), substituted “taxable fuels” for “gasoline, diesel fuel.”.

1993—Pub. L. 103-66 amended heading and text generally. Prior to amendment, text read as follows:

“(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

“(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

“(3) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline not used for taxable purposes, see section 6427.”

1986—Pub. L. 99-514 amended section generally. Prior to amendment, section 4083 “Exemption of sales to producer”, read as follows: “Under regulations prescribed by the Secretary the tax imposed by section 4081 shall not apply in the case of sales of gasoline to a producer of gasoline.”

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**EFFECTIVE DATE OF 2012 AMENDMENT**

Pub. L. 112-95, title XI, §1103(d)(2), Feb. 14, 2012, 126 Stat. 151, provided that: The amendment made by subsection (b) [amending this section] shall apply to uses of aircraft after March 31, 2012.”

**EFFECTIVE DATE OF 2005 AMENDMENT**

Pub. L. 109-59, title XI, §11123(c), Aug. 10, 2005, 119 Stat. 1952, provided that: “The amendments made by this section [amending this section and section 4261 of this title] shall apply to transportation beginning after September 30, 2005.”

**EFFECTIVE DATE OF 2004 AMENDMENT**

Amendment by section 301(c)(8) of Pub. L. 108-357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108-357, set out as a note under section 40 of this title.

Amendment by section 853(b) of Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

Pub. L. 108-357, title VIII, §858(b), Oct. 22, 2004, 118 Stat. 1617, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].”

Pub. L. 108-357, title VIII, §859(c), Oct. 22, 2004, 118 Stat. 1618, provided that: “The amendments made by this section [enacting section 6717 of this title and amending this section] shall take effect on January 1, 2005.”

Pub. L. 108-357, title VIII, §870(c), Oct. 22, 2004, 118 Stat. 1624, provided that: “The amendment made by this section [amending this section and section 6427 of this title] shall apply to fuel removed, sold, or used after December 31, 2004.”

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by section 902(b)(3) of Pub. L. 105-34 effective Jan. 1, 1998, see section 902(c) of Pub. L. 105-34, set out as a note under section 4041 of this title.

Amendment by section 1032(a), (e)(4) of Pub. L. 105-34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105-34, as amended, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514 set out as a note under section 4081 of this title.

## § 4084. Cross references

(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

(Added Pub. L. 103-66, title XIII, § 13242(a), Aug. 10, 1993, 107 Stat. 518.)

## PRIOR PROVISIONS

A prior section 4084, added Apr. 2, 1956, ch. 160, § 4(a)(1), 70 Stat. 90; amended June 29, 1956, ch. 462, title II, § 208(e)(1), 70 Stat. 396, contained cross references, prior to the general amendment of this subpart by Pub. L. 99-514, § 1703(a).

A prior section 4091, added Pub. L. 100-203, title X, § 10502(a), Dec. 22, 1987, 101 Stat. 1330-438; amended Pub. L. 100-203, title X, § 10502(g), Dec. 22, 1987, 101 Stat. 1330-446; Pub. L. 100-647, title II, § 2001(d)(6)(A)-(C), Nov. 10, 1988, 102 Stat. 3596; Pub. L. 101-508, title XI, §§ 11211(b)(1), (2), (6)(A), (B), (c)(4), (e)(4), 11213(b)(1), (2)(C), (D), (d)(2)(A), 11704(a)(38), Nov. 5, 1990, 104 Stat. 1388-424 to 1388-427, 1388-432, 1388-433, 1388-435, 1388-520; Pub. L. 102-240, title VIII, § 8002(a)(4), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103-66, title XIII, §§ 13241(b)(1), (2)(B)(i), (ii), 13242(a), Aug. 10, 1993, 107 Stat. 510, 518; Pub. L. 104-188, title I, § 1609(a)(1), Aug. 20, 1996, 110 Stat. 1841; Pub. L. 105-2, § 2(a)(1), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105-34, title X, § 1031(a)(1), title XIV, § 1436(a), Aug. 5, 1997, 111 Stat. 929, 1053; Pub. L. 105-178, title IX, § 9003(a)(1)(D), (b)(2)(D), June 9, 1998, 112 Stat. 502, 503; Pub. L. 105-206, title VI, § 6014(d), July 22, 1998, 112 Stat. 820, related to imposition of tax on the sale of aviation fuel, prior to repeal by Pub. L. 108-357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4091, acts Aug. 16, 1954, ch. 736, 68A Stat. 483; Aug. 11, 1955, ch. 793, § 1(a), 69 Stat. 676; June 21, 1965, Pub. L. 89-44, title II, § 202(a), 79 Stat. 137, imposed a tax of 6 cents a gallon on lubricating oil (other than cutting oils) sold in the United States by the manufacturer or producer to be paid by the manufacturer or producer, prior to repeal by Pub. L. 97-424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4092, added Pub. L. 100-203, title X, § 10502(a), Dec. 22, 1987, 101 Stat. 1330-440; amended Pub. L. 100-647, title III, § 3003(a), Nov. 10, 1988, 102 Stat. 3616; Pub. L. 103-66, title XIII, §§ 13163(a)(1), (3), 13242(a), Aug. 10, 1993, 107 Stat. 453, 519; Pub. L. 105-34, title XVI, § 1601(f)(4)(C), Aug. 5, 1997, 111 Stat. 1091; Pub. L. 105-206, title VI, § 6023(16), July 22, 1998, 112 Stat. 825, related to exemptions from tax imposed by former section 4091, prior to repeal by Pub. L. 108-357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4092, acts Aug. 16, 1954, ch. 736, 68A Stat. 484; Aug. 11, 1955, ch. 793, § 1(b), 69 Stat. 676;

Nov. 9, 1978, Pub. L. 95-618, title IV, § 404(b), 92 Stat. 3205, provided for certain vendees to be considered as manufacturers and defined “cutting oils”, prior to repeal by Pub. L. 97-424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4093, added Pub. L. 100-203, title X, § 10502(a), Dec. 22, 1987, 101 Stat. 1330-440; amended Pub. L. 100-647, title II, § 2004(s)(1), title III, § 3001(a), Nov. 10, 1988, 102 Stat. 3609, 3613; Pub. L. 101-508, title XI, §§ 11211(b)(4)(A), 11212(b)(4), 11704(a)(20), Nov. 5, 1990, 104 Stat. 1388-425, 1388-431, 1388-519; Pub. L. 103-66, title XIII, §§ 13241(f)(3), (4), 13242(a), Aug. 10, 1993, 107 Stat. 511, 512, 520; Pub. L. 104-188, title I, § 1702(b)(2)(A), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 105-34, title X, § 1032(e)(5), Aug. 5, 1997, 111 Stat. 935, defined terms for purposes of former subpart B of this part, prior to repeal by Pub. L. 108-357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4093, acts Aug. 16, 1954, ch. 736, 68A Stat. 484; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 9, 1978, Pub. L. 95-618, title IV, § 404(a), 92 Stat. 3204, exempted from tax lubricating oils sold to a manufacturer or producer of lubricating oils for resale, or for certain uses of lubricating oil in producing rerefining oil, prior to repeal by Pub. L. 97-424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4094, added Pub. L. 89-44, title II, § 202(c)(1)(A), June 21, 1965, 79 Stat. 139, provided cross reference to sections 39 and 6424 of this title for provisions to relieve purchasers of lubricating oil from excise tax in the case of lubricating oil used otherwise than in a highway motor vehicle, prior to repeal by Pub. L. 97-424, title V, § 515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

## EFFECTIVE DATE

Section effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 4041 of this title.

## SUBPART B—SPECIAL PROVISIONS APPLICABLE TO FUELS TAX

Sec.	
4101.	Registration and bond.
4102.	Inspection of records by local officers.
4103.	Certain additional persons liable for tax where willful failure to pay.
4104.	Information reporting for persons claiming certain tax benefits.
4105.	Two-party exchanges.

## PRIOR PROVISIONS

A prior subpart B, consisting of sections 4091 to 4093, related to taxation of aviation fuel, prior to repeal by Pub. L. 108-357, title VIII, § 853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

## AMENDMENTS

2004—Pub. L. 108-357, title III, § 303(b), title VIII, §§ 853(d)(1), (2)(T), 866(b), Oct. 22, 2004, 118 Stat. 1466, 1612, 1614, 1622, redesignated subpart C as B, substituted “Special Provisions Applicable to Fuels Tax” for “Special Provisions Applicable to Petroleum Products” in subpart heading, and added items 4104 and 4105.

1990—Pub. L. 101-508, title XI, § 11212(e)(3), Nov. 5, 1990, 104 Stat. 1388-432, added item 4103.

1986—Pub. L. 99-514, title XVII, § 1703(b)(2), Oct. 22, 1986, 100 Stat. 2776, substituted “Registration and bond” for “Registration” in item 4101.

1976—Pub. L. 94-455, title XII, § 1202(c)(2), Oct. 4, 1976, 90 Stat. 1686, substituted “Inspection of records by local officers” for “Inspection of records, returns, etc., by local officers” in item 4102.



1965—Pub. L. 89-44, title VIII, §802(b)(5), June 21, 1965, 79 Stat. 159, struck out “and bond” after “Registration” in item 4101.

### **§ 4101. Registration and bond**

#### **(a) Registration**

##### **(1) In general**

Every person required by the Secretary to register under this section with respect to the tax imposed by section 4041(a) or 4081, every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A)), and every person producing second generation biofuel (as defined in section 40(b)(6)(E)) shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

##### **(2) Registration of persons within foreign trade zones, etc.**

The Secretary shall require registration by any person which—

- (A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or
- (B) holds an inventory position with respect to a taxable fuel in such a terminal.

##### **(3) Display of registration**

Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.

##### **(4) Registration of persons extending credit on certain exempt sales of fuel**

The Secretary shall require registration by any person which—

- (A) extends credit by credit card to any ultimate purchaser described in subparagraph (C) or (D) of section 6416(b)(2) for the purchase of taxable fuel upon which tax has been imposed under section 4041 or 4081, and
- (B) does not collect the amount of such tax from such ultimate purchaser.

##### **(5) Reregistration in event of change in ownership**

Under regulations prescribed by the Secretary, a person (other than a corporation the stock of which is regularly traded on an established securities market) shall be required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).

#### **(b) Bonds and liens**

##### **(1) In general**

Under regulations prescribed by the Secretary, the Secretary may require, as a condition of permitting any person to be registered under subsection (a), that such person—

(A) give a bond in such sum as the Secretary determines appropriate, and

(B) agree to the imposition of a lien—

(i) on such property (or rights to property) of such person used in the trade or business for which the registration is sought, or

(ii) with the consent of such person, on any other property (or rights to property) of such person as the Secretary determines appropriate.

Rules similar to the rules of section 6323 shall apply to the lien imposed pursuant to this paragraph.

##### **(2) Release or discharge of lien**

If a lien is imposed pursuant to paragraph (1), the Secretary shall issue a certificate of discharge or a release of such lien in connection with a transfer of the property if there is furnished to the Secretary (and accepted by him) a bond in such sum as the Secretary determines appropriate or the transferor agrees to the imposition of a substitute lien under paragraph (1)(B) in such sum as the Secretary determines appropriate. The Secretary shall respond to any request to discharge or release a lien imposed pursuant to paragraph (1) in connection with a transfer of property not later than 90 days after the date the request for such a discharge or release is made.

##### **(c) Denial, revocation, or suspension of registration**

Rules similar to the rules of section 4222(c) shall apply to registration under this section.

##### **(d) Information reporting**

The Secretary may require—

- (1) information reporting by any person registered under this section, and
- (2) information reporting by such other persons as the Secretary deems necessary to carry out this part.

Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.

(Aug. 16, 1954, ch. 736, 68A Stat. 484; Pub. L. 89-44, title VIII, §802(b)(2), June 21, 1965, 79 Stat. 159; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-424, title V, §515(b)(8), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 99-514, title XVII, §1703(b)(1), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100-203, title X, §10502(d)(3), Dec. 22, 1987, 101 Stat. 1330-444; Pub. L. 101-508, title XI, §11212(b)(1), Nov. 5, 1990, 104 Stat. 1388-430; Pub. L. 103-66, title XIII, §13242(d)(1), Aug. 10, 1993, 107 Stat. 522; Pub. L. 105-34, title X, §1032(d), Aug. 5, 1997, 111 Stat. 934; Pub. L. 105-206, title VI, §6010(h)(5), July 22, 1998, 112 Stat. 815; Pub. L. 107-147, title VI, §615(a), Mar. 9, 2002, 116 Stat. 62; Pub. L. 108-357, title III, §301(b), title VIII, §§853(d)(2)(F), 861(a), 862(a), 864(a), Oct. 22, 2004, 118 Stat. 1461, 1613, 1618, 1619, 1621; Pub. L. 109-59, title XI, §§11113(c), 11163(a), 11164(a), Aug. 10, 2005, 119 Stat. 1949, 1973, 1975; Pub. L. 110-172, §11(a)(29), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110-234, title XV, §15321(b)(3)(A), May 22, 2008, 122 Stat. 1513; Pub. L. 110-246, §4(a), title XV, §15321(b)(3)(A), June 18, 2008, 122 Stat.

1664, 2275; Pub. L. 112-240, title IV, § 404(b)(3)(C), Jan. 2, 2013, 126 Stat. 2339.)

#### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

#### AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112-240 substituted “second generation biofuel” for “cellulosic biofuel”.

2008—Subsec. (a)(1). Pub. L. 110-246, § 15321(b)(3)(A), substituted “, every person producing or importing” for “and every person producing or importing” and inserted “, and every person producing cellulosic biofuel (as defined in section 40(b)(6)(E))” before “shall register”.

2007—Subsec. (a)(4), (5). Pub. L. 110-172 redesignated par. (4) relating to reregistration in event of change of ownership as (5).

2005—Subsec. (a)(1). Pub. L. 109-59, § 11113(c), substituted “401(a)” for “401(a)(1)”.

Subsec. (a)(4). Pub. L. 109-59, § 11164(a), added par. (4) relating to reregistration in event of change in ownership.

Pub. L. 109-59, § 11163(a), added par. (4) relating to registration of persons extending credit on certain exempt sales of fuel.

2004—Subsec. (a). Pub. L. 108-357, § 861(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 108-357, § 853(d)(2)(F), substituted “or 4081” for “, 4081, or 4091”.

Pub. L. 108-357, § 301(b), amended par. (1), as amended by Pub. L. 108-357, § 861, by inserting “and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))” before “shall register with the Secretary”.

Subsec. (a)(2), (3). Pub. L. 108-357, § 862(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 108-357, § 864(a), inserted concluding provisions.

2002—Subsec. (e). Pub. L. 107-147 struck out heading and text of subsec. (e). Text read as follows:

“(1) IN GENERAL.—A terminal for kerosene or diesel fuel may not be an approved facility for storage of nontax-paid diesel fuel or kerosene under this section unless the operator of such terminal offers such fuel in a dyed form for removal for nontaxable use in accordance with section 4082(a).

“(2) EXCEPTION.—Paragraph (1) shall not apply to any terminal exclusively providing aviation-grade kerosene by pipeline to an airport.”

1998—Subsec. (e)(1). Pub. L. 105-206 substituted “such fuel in a dyed form” for “dyed diesel fuel and kerosene”.

1997—Subsec. (e). Pub. L. 105-34 added subsec. (e).

1993—Subsec. (a). Pub. L. 103-66 substituted “4041(a)(1), 4081,” for “4081”.

1990—Pub. L. 101-508 amended section generally. Prior to amendment, section read as follows:

“(a) REGISTRATION.—Every person subject to tax under section 4081 or 4091 shall, before incurring any liability for tax under such section, register with the Secretary.

“(b) BOND.—Under regulations prescribed by the Secretary, every person who registers under subsection (a) may be required to give a bond in such sum as the Secretary determines.”

1987—Subsec. (a). Pub. L. 100-203 inserted “or 4091” after “section 4081”.

1986—Pub. L. 99-514 amended section generally, substituting “Registration and bond” for “Registration” in section catchline, designating existing provisions as subsec. (a), inserting subsec. (a) heading, and adding subsec. (b).

1983—Pub. L. 97-424 struck out “or section 4091” after “4081”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1965—Pub. L. 89-44 struck out all references to a bond to be given and its terms and requirements.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 applicable to fuels sold or used after Jan. 2, 2013, see section 404(b)(4) of Pub. L. 112-240, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(b)(3)(A) of Pub. L. 110-246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110-246, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 11113(c) of Pub. L. 109-59 applicable to any sale or use for any period after Sept. 30, 2006, see section 11113(d) of Pub. L. 109-59, set out as a note under section 4041 of this title.

Pub. L. 109-59, title XI, § 11163(e), Aug. 10, 2005, 119 Stat. 1975, provided that: “The amendments made by this section [amending this section and sections 6206, 6416, 6427, and 6675 of this title] shall apply to sales after December 31, 2005.”

Pub. L. 109-59, title XI, § 11164(c), Aug. 10, 2005, 119 Stat. 1976, provided that: “The amendments made by this section [amending this section and sections 6719, 7232, and 7272 of this title] shall apply to actions, or failures to act, after the date of the enactment of this Act [Aug. 10, 2005].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(b) of Pub. L. 108-357 effective Apr. 1, 2005, see section 301(d)(2) of Pub. L. 108-357, set out as a note under section 40 of this title.

Amendment by section 853(d)(2)(F) of Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

Pub. L. 108-357, title VIII, § 861(c)(1), Oct. 22, 2004, 118 Stat. 1619, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2005.”

Pub. L. 108-357, title VIII, § 862(c), Oct. 22, 2004, 118 Stat. 1619, provided that: “The amendments made by this section [amending this section and section 6718 of this title] shall take effect on January 1, 2005.”

Pub. L. 108-357, title VIII, § 864(b), Oct. 22, 2004, 118 Stat. 1621, provided that: “The amendment made by this section [amending this section] shall apply on January 1, 2006.”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, § 615(b), Mar. 9, 2002, 116 Stat. 62, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2002.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective Jan. 1, 2002, see section 1032(f)(2) of Pub. L. 105-34, as amended, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101-508, set out as a note under section 4081 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100-203, set out as a note under section 40 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514, set out as a note under section 4081 of this title.

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

## EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89-44, set out as a note under section 4082 of this title.

## TREATMENT OF DEEP-DRAFT VESSELS

Pub. L. 109-59, title XI, §11166(a), Aug. 10, 2005, 119 Stat. 1976, provided that: “On and after the date of the enactment of this Act [Aug. 10, 2005], the Secretary of the Treasury shall require that a vessel described in section 4042(c)(1) of the Internal Revenue Code of 1986 be considered a vessel for purposes of the registration of the operator of such vessel under section 4101 of such Code, unless such operator uses such vessel exclusively for purposes of the entry of taxable fuel.”

## PUBLICATION OF REGISTERED PERSONS

Pub. L. 108-357, title VIII, §860(c), Oct. 22, 2004, 118 Stat. 1618, provided that: “Beginning on January 1, 2005, the Secretary of the Treasury (or the Secretary’s delegate) shall periodically publish under section 6103(k)(7) of the Internal Revenue Code of 1986 a current list of persons registered under section 4101 of such Code who are required to register under such section.”

**§ 4102. Inspection of records by local officers**

Under regulations prescribed by the Secretary, records required to be kept with respect to taxes under this part shall be open to inspection by such officers of a State, or a political subdivision of any such State, as shall be charged with the enforcement or collection of any tax on any taxable fuel (as defined in section 4083).

(Aug. 16, 1954, ch. 736, 68A Stat. 484; Pub. L. 94-455, title XII, §1202(c)(1), Oct. 4, 1976, 90 Stat. 1686; Pub. L. 97-424, title V, §515(b)(9), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 103-66, title XIII, §13242(d)(2), Aug. 10, 1993, 107 Stat. 522.)

## AMENDMENTS

1993—Pub. L. 103-66 substituted “any taxable fuel (as defined in section 4083)” for “gasoline”.

1983—Pub. L. 97-424 struck out “or lubricating oils” after “gasoline”.

1976—Pub. L. 94-455 struck out “returns, etc.” after “Inspection of records”, “or his delegate” after “Secretary”, “and returns, reports, and statements with re-

spect to such taxes filed with the Secretary or his delegate” after “under this part”, substituted “or a political subdivision of any such State” for “or, Territory or political subdivision thereof or the District of Columbia” after “of any State”, and struck out provision relating to availability and fee for certified copies of statements, returns, or reports filed in Secretary’s office.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94-455, set out as a note under section 6103 of this title.

**§ 4103. Certain additional persons liable for tax where willful failure to pay**

In any case in which there is a willful failure to pay the tax imposed by section 4041(a)(1) or 4081, each person—

(1) who is an officer, employee, or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty, or

(2) who willfully causes the taxpayer to fail to pay such tax,

shall be jointly and severally liable with the taxpayer for the tax to which such failure relates.

(Added Pub. L. 101-508, title XI, §11212(c), Nov. 5, 1990, 104 Stat. 1388-431; amended Pub. L. 103-66, title XIII, §13242(d)(1), Aug. 10, 1993, 107 Stat. 522; Pub. L. 108-357, title VIII, §853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613.)

## AMENDMENTS

2004—Pub. L. 108-357 substituted “or 4081” for “, 4081, or 4091” in introductory provisions.

1993—Pub. L. 103-66 substituted “4041(a)(1), 4081,” for “4081” in introductory provisions.

## EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103-66, set out as a note under section 4041 of this title.

## EFFECTIVE DATE

Section effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101-508, set out as an Effective Date of 1990 Amendment note under section 4081 of this title.

**§ 4104. Information reporting for persons claiming certain tax benefits****(a) In general**

The Secretary shall require any person claiming tax benefits—

(1) under the provisions of section<sup>1</sup> 34, 40, and 40A, to file a return at the time such per-

<sup>1</sup> So in original. Probably should be “sections”.

son claims such benefits (in such manner as the Secretary may prescribe), and

(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a quarterly return (in such manner as the Secretary may prescribe).

**(b) Contents of return**

Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

**(c) Enforcement**

With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.

(Added Pub. L. 108-357, title III, § 303(a), Oct. 22, 2004, 118 Stat. 1466.)

**EFFECTIVE DATE**

Pub. L. 108-357, title III, § 303(c), Oct. 22, 2004, 118 Stat. 1466, provided that: “The amendments made by this section [enacting this section] shall take effect on January 1, 2005.”

**§ 4105. Two-party exchanges**

**(a) In general**

In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

**(b) Two-party exchange**

The term “two-party exchange” means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

(4) The transaction is the subject of a written contract.

(Added Pub. L. 108-357, title VIII, § 866(a), Oct. 22, 2004, 118 Stat. 1621.)

**PRIOR PROVISIONS**

Prior sections 4111 to 4113, 4121, and 4131 of this title constituted a former subchapter B of this chapter, see Prior Provisions note set out preceding section 4121 of this title.

**EFFECTIVE DATE**

Pub. L. 108-357, title VIII, § 866(c), Oct. 22, 2004, 118 Stat. 1622, provided that: “The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].”

**Subchapter B—Coal**

Sec.

4121. Imposition of tax.

Sec.

**PRIOR PROVISIONS**

A prior subchapter B consisted of sections 4111 to 4113, 4121, and 4131 of this title.

Section 4111, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Sept. 2, 1958, Pub. L. 85-859, title I, § 111(a), 72 Stat. 1277, imposed a manufacturers excise tax of 5 percent on household type refrigerators, quick freeze or frozen storage units, or combinations, and a tax of 10 percent on self-contained air-conditioning units, prior to repeal by Pub. L. 89-44, title II, § 203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after June 22, 1965.

Section 4112, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Aug. 11, 1955, ch. 805, § 1(e), 69 Stat. 689, defined refrigerator components, prior to repeal by Pub. L. 85-859, title I, § 111(b)(1), Sept. 2, 1958, 72 Stat. 1277, effective the first day of the first calendar quarter beginning more than 60 days after Sept. 2, 1958.

Section 4113, act Aug. 16, 1954, ch. 736, 68A Stat. 485, related to exemptions for manufacturers of refrigerator components, prior to repeal by act Aug. 11, 1955, ch. 805, § 1(d), 69 Stat. 689, effective on the first day of the first month beginning more than 10 days after Aug. 11, 1955.

Section 4121, acts Aug. 16, 1954, ch. 736, 68A Stat. 486; Sept. 2, 1958, Pub. L. 85-859, title I, § 112, 72 Stat. 1277, imposed a 5 percent tax on electric, gas, and oil household appliances and their accessories, prior to repeal by Pub. L. 89-44, title II, § 203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after June 22, 1965.

Section 4131, act Aug. 16, 1954, ch. 736, 68A Stat. 486, imposed a 10 percent tax on electric light bulbs and tubes, prior to repeal by Pub. L. 89-44, title II, § 203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after Jan. 1, 1965.

**§ 4121. Imposition of tax**

**(a) Tax imposed**

**(1) In general**

There is hereby imposed on coal from mines located in the United States sold by the producer, a tax equal to the rate per ton determined under subsection (b).

**(2) Limitation on tax**

The amount of the tax imposed by paragraph (1) with respect to a ton of coal shall not exceed the applicable percentage (determined under subsection (b)) of the price at which such ton of coal is sold by the producer.

**(b) Determination of rates and limitation on tax**

For purposes of subsection (a)—

(1) the rate of tax on coal from underground mines shall be \$1.10,

(2) the rate of tax on coal from surface mines shall be \$.55, and

(3) the applicable percentage shall be 4.4 percent.

**(c) Tax not to apply to lignite**

The tax imposed by subsection (a) shall not apply in the case of lignite.

**(d) Definitions**

For purposes of this subchapter—

**(1) Coal from surface mines**

Coal shall be treated as produced from a surface mine if all of the geological matter above the coal being mined is removed before the coal is extracted from the earth. Coal extracted by auger shall be treated as coal from a surface mine.

**(2) Coal from underground mines**

Coal shall be treated as produced from an underground mine if it is not produced from a surface mine.

**(3) United States**

The term “United States” has the meaning given to it by paragraph (1) of section 638.

**(4) Ton**

The term “ton” means 2,000 pounds.

**(e) Reduction in amount of tax****(1) In general**

Effective with respect to sales after the temporary increase termination date, subsection (b) shall be applied—

- (A) by substituting “\$.50” for “\$1.10”,
- (B) by substituting “\$.25” for “\$.55”, and
- (C) by substituting “2 percent” for “4.4 percent”.

**(2) Temporary increase termination date**

For purposes of paragraph (1), the temporary increase termination date is the earlier of—

- (A) December 31, 2018, or
- (B) the first December 31 after 2007 as of which there is—
  - (i) no balance of repayable advances made to the Black Lung Disability Trust Fund, and
  - (ii) no unpaid interest on such advances.

(Added Pub. L. 95-227, §2(a), Feb. 10, 1978, 92 Stat. 11; amended Pub. L. 97-119, title I, §102(a), Dec. 29, 1981, 95 Stat. 1635; Pub. L. 99-272, title XIII, §13203(a), (c), Apr. 7, 1986, 100 Stat. 312, 313; Pub. L. 99-514, title XVIII, §1897(a), Oct. 22, 1986, 100 Stat. 2941; Pub. L. 100-203, title X, §10503, Dec. 22, 1987, 101 Stat. 1330-446; Pub. L. 110-343, div. B, title I, §113(a), Oct. 3, 2008, 122 Stat. 3824.)

**PRIOR PROVISIONS**

For prior section 4121, see Prior Provisions note set out preceding this section.

**AMENDMENTS**

2008—Subsec. (e)(2)(A). Pub. L. 110-343, §113(a)(1), substituted “December 31, 2018” for “January 1, 2014”.

Subsec. (e)(2)(B). Pub. L. 110-343, §113(a)(2), substituted “December 31 after 2007” for “January 1 after 1981” in introductory provisions.

1987—Subsec. (e)(2)(A). Pub. L. 100-203 substituted “2014” for “1996”.

1986—Subsec. (a). Pub. L. 99-272, §13203(a), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: “There is hereby imposed on coal sold by the producer a tax at the rates of—

- “(1) 50 cents per ton in the case of coal from underground mines located in the United States, and
- “(2) 25 cents per ton in the case of coal from surface mines located in the United States.”

Subsec. (b). Pub. L. 99-514 struck out “, in the case of sales during any calendar year beginning after December 31, 1985” after “subsection (a)”.

Pub. L. 99-272, §13203(a), amended subsec. (b) generally. Prior to amendment subsec. (b), limitation on tax, read as follows: “The amount of the tax imposed by subsection (a) with respect to a ton of coal shall not exceed 2 percent of the price at which such ton of coal is sold by the producer.”

Subsec. (e). Pub. L. 99-272, §13203(c), substituted “Reduction in amount of tax” for “Temporary increase in amount of tax” in heading and amended par. (1) generally. Prior to amendment par. (1) read as follows: “Effective with respect to sales after December 31, 1981, and before the temporary increase termination date—

“(A) subsection (a) shall be applied—

“(i) by substituting ‘\$1’ for ‘50 cents’, and

“(ii) by substituting ‘50 cents’ for ‘25 cents’, and

“(B) subsection (b) shall be applied by substituting ‘4 percent’ for ‘2 percent’.”

1981—Subsec. (e). Pub. L. 97-119 added subsec. (e).

**EFFECTIVE DATE OF 1986 AMENDMENTS**

Pub. L. 99-514, title XVIII, §1897(b), Oct. 22, 1986, 100 Stat. 2941, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 13203 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 13203 of Pub. L. 99-272, see note below].”

Pub. L. 99-272, title XIII, §13203(d), Apr. 7, 1986, 100 Stat. 313, provided that: “The amendments made by this section [amending this section] shall apply to sales after March 31, 1986.”

**EFFECTIVE DATE OF 1981 AMENDMENT**

Pub. L. 97-119, title I, §102(b), Dec. 29, 1981, 95 Stat. 1635, provided that: “The amendment made by subsection (a) [amending this section] shall apply to sales after December 31, 1981.”

**EFFECTIVE DATE**

Pub. L. 95-227, §2(d), Feb. 10, 1978, 92 Stat. 12, provided that: “The amendments made by this section [enacting this section and amending sections 4218, 4221, 4293, and 6416 of this title] shall apply with respect to sales after March 31, 1978.”

Pub. L. 95-227, §5, Feb. 10, 1978, 92 Stat. 24, provided that: “Notwithstanding any other provision of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] to the contrary, no provision of this Act (including any amendment made by any such provision) shall take effect or apply unless an Act, enacted after the date of enactment of this Act [Feb. 10, 1978], contains a provision, explicitly in satisfaction of the requirements of this section, which states that it is the intent of the Congress that the provisions of this Act shall take effect.”

[Pub. L. 95-239, §20(c), Mar. 1, 1978, 92 Stat. 106, provided that: “In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977 [Pub. L. 95-227, set out above], it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act.”]

**SHORT TITLE OF 1978 AMENDMENT**

For short title of Pub. L. 95-227, Feb. 10, 1978, 92 Stat. 11, as the “Black Lung Benefits Revenue Act of 1977”, see Short Title of 1978 Amendments note set out under section 1 of this title.

**SPECIAL RULES FOR REFUND OF THE COAL EXCISE TAX TO CERTAIN COAL PRODUCERS AND EXPORTERS**

Pub. L. 110-343, div. B, title I, §114, Oct. 3, 2008, 122 Stat. 3826, provided that:

“(a) REFUND.—

“(1) COAL PRODUCERS.—

“(A) IN GENERAL.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, if—

“(i) a coal producer establishes that such coal producer, or a party related to such coal producer, exported coal produced by such coal producer to a foreign country or shipped coal produced by such coal producer to a possession of the United States, or caused such coal to be exported or shipped, the export or shipment of which was other than through an exporter who meets the requirements of paragraph (2),

“(ii) such coal producer filed an excise tax return on or after October 1, 1990, and on or before the date of the enactment of this Act [Oct. 3, 2008], and

“(iii) such coal producer files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act, then the Secretary shall pay to such coal producer an amount equal to the tax paid under section 4121 of such Code on such coal exported or shipped by the coal producer or a party related to such coal producer, or caused by the coal producer or a party related to such coal producer to be exported or shipped.

“(B) SPECIAL RULES FOR CERTAIN TAXPAYERS.—For purposes of this section—

“(i) IN GENERAL.—If a coal producer or a party related to a coal producer has received a judgment described in clause (iii), such coal producer shall be deemed to have established the export of coal to a foreign country or shipment of coal to a possession of the United States under subparagraph (A)(i).

“(ii) AMOUNT OF PAYMENT.—If a taxpayer described in clause (i) is entitled to a payment under subparagraph (A), the amount of such payment shall be reduced by any amount paid pursuant to the judgment described in clause (iii).

“(iii) JUDGMENT DESCRIBED.—A judgment is described in this subparagraph if such judgment—

“(I) is made by a court of competent jurisdiction within the United States,

“(II) relates to the constitutionality of any tax paid on exported coal under section 4121 of the Internal Revenue Code of 1986, and

“(III) is in favor of the coal producer or the party related to the coal producer.

“(2) EXPORTERS.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, and a judgment described in paragraph (1)(B)(iii) of this subsection, if—

“(A) an exporter establishes that such exporter exported coal to a foreign country or shipped coal to a possession of the United States, or caused such coal to be so exported or shipped,

“(B) such exporter filed a tax return on or after October 1, 1990, and on or before the date of the enactment of this Act [Oct. 3, 2008], and

“(C) such exporter files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such exporter an amount equal to \$0.825 per ton of such coal exported by the exporter or caused to be exported or shipped, or caused to be exported or shipped, [sic] by the exporter.

“(b) LIMITATIONS.—Subsection (a) shall not apply with respect to exported coal if a settlement with the Federal Government has been made with and accepted by, the coal producer, a party related to such coal producer, or the exporter, of such coal, as of the date that the claim is filed under this section with respect to such exported coal. For purposes of this subsection, the term ‘settlement with the Federal Government’ shall not include any settlement or stipulation entered into as of the date of the enactment of this Act [Oct. 3, 2008], the terms of which contemplate a judgment concerning which any party has reserved the right to file an appeal, or has filed an appeal.

“(c) SUBSEQUENT REFUND PROHIBITED.—No refund shall be made under this section to the extent that a credit or refund of such tax on such exported or shipped coal has been paid to any person.

“(d) DEFINITIONS.—For purposes of this section—

“(1) COAL PRODUCER.—The term ‘coal producer’ means the person in whom is vested ownership of the coal immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles

or from the silt waste product which results from the wet washing (or similar processing) of coal.

“(2) EXPORTER.—The term ‘exporter’ means a person, other than a coal producer, who does not have a contract, fee arrangement, or any other agreement with a producer or seller of such coal to export or ship such coal to a third party on behalf of the producer or seller of such coal and—

“(A) is indicated in the shipper’s export declaration or other documentation as the exporter of record, or

“(B) actually exported such coal to a foreign country or shipped such coal to a possession of the United States, or caused such coal to be so exported or shipped.

“(3) RELATED PARTY.—The term ‘a party related to such coal producer’ means a person who—

“(A) is related to such coal producer through any degree of common management, stock ownership, or voting control,

“(B) is related (within the meaning of section 144(a)(3) of the Internal Revenue Code of 1986) to such coal producer, or

“(C) has a contract, fee arrangement, or any other agreement with such coal producer to sell such coal to a third party on behalf of such coal producer.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of [the] Treasury or the Secretary’s designee.

“(e) TIMING OF REFUND.—With respect to any claim for refund filed pursuant to this section, the Secretary shall determine whether the requirements of this section are met not later than 180 days after such claim is filed. If the Secretary determines that the requirements of this section are met, the claim for refund shall be paid not later than 180 days after the Secretary makes such determination.

“(f) INTEREST.—Any refund paid pursuant to this section shall be paid by the Secretary with interest from the date of overpayment determined by using the overpayment rate and method under section 6621 of the Internal Revenue Code of 1986.

“(g) DENIAL OF DOUBLE BENEFIT.—The payment under subsection (a) with respect to any coal shall not exceed—

“(1) in the case of a payment to a coal producer, the amount of tax paid under section 4121 of the Internal Revenue Code of 1986 with respect to such coal by such coal producer or a party related to such coal producer, and

“(2) in the case of a payment to an exporter, an amount equal to \$0.825 per ton with respect to such coal exported by the exporter or caused to be exported by the exporter.

“(h) APPLICATION OF SECTION.—This section applies only to claims on coal exported or shipped on or after October 1, 1990, through the date of the enactment of this Act [Oct. 3, 2008].

“(i) STANDING NOT CONFERRED.—

“(1) EXPORTERS.—With respect to exporters, this section shall not confer standing upon an exporter to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by a coal producer of any Federal or State tax, fee, or royalty paid by the coal producer.

“(2) COAL PRODUCERS.—With respect to coal producers, this section shall not confer standing upon a coal producer to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by an exporter of any Federal or State tax, fee, or royalty paid by the producer and alleged to have been passed on to an exporter.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan

amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### Subchapter C—Certain Vaccines

Sec.	
4131.	Imposition of tax.
4132.	Definitions and special rules.

#### PRIOR PROVISIONS

A prior subchapter C consisted of sections 4141 to 4143, 4151, and 4152 of this title.

Section 4141, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Aug. 11, 1955, ch. 805, §2(a), 69 Stat. 690; Sept. 2, 1958, Pub. L. 85-859, title I, §113(a), 72 Stat. 1278, imposed a tax equivalent to 10 percent of selling price on radio and television receiving sets, phonographs, radio, television, and phonograph combinations, components, and phonograph records, prior to repeal by Pub. L. 89-44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4142, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Sept. 2, 1958, Pub. L. 85-859, title I, §113(a), 72 Stat. 1278; Oct. 13, 1964, Pub. L. 88-653, §6(a), 78 Stat. 1086, defined "radio and television components" and provided formula to determine selling price of rebuilt television picture tubes, prior to repeal by Pub. L. 89-44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4143, Pub. L. 85-859, title I, §113(a), Sept. 2, 1958, 72 Stat. 1278, granted an exemption for certain types of communication, detection, and navigation equipment and components, prior to repeal by Pub. L. 89-44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4151, act Aug. 16, 1954, ch. 736, 68A Stat. 488, imposed a tax equivalent to 10 percent of selling price upon the sale of musical instruments, prior to repeal by Pub. L. 89-44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4152, act Aug. 16, 1954, ch. 736, 68A Stat. 488, related to exemption of musical instruments sold for religious or educational use, prior to repeal by Pub. L. 85-859, title I, §119(b)(2), Sept. 2, 1958, 72 Stat. 1286, effective on the first day of the first calendar quarter which began more than 60 days after Sept. 2, 1958.

### § 4131. Imposition of tax

#### (a) General rule

There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

#### (b) Amount of tax

##### (1) In general

The amount of the tax imposed by subsection (a) shall be 75 cents per dose of any taxable vaccine.

##### (2) Combinations of vaccines

If any taxable vaccine is described in more than 1 subparagraph of section 4132(a)(1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts for the vaccines which are so included.

#### (c) Application of section

The tax imposed by this section shall apply—

- (1) after December 31, 1987, and before January 1, 1993, and

- (2) during periods after the date of the enactment of the Revenue Reconciliation Act of 1993.

(Added Pub. L. 100-203, title IX, §9201(a), Dec. 22, 1987, 101 Stat. 1330-327; amended Pub. L. 103-66, title XIII, §13421(a), Aug. 10, 1993, 107 Stat. 565; Pub. L. 105-34, title IX, §904(a), Aug. 5, 1997, 111 Stat. 873.)

#### REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

#### AMENDMENTS

1997—Subsec. (b). Pub. L. 105-34 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b) AMOUNT OF TAX.—

“(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

<b>“If the taxable vaccine is:</b>	<b>The tax per dose is:</b>
DPT vaccine .....	\$4.56
DT vaccine .....	0.06
MMR vaccine .....	4.44
Polio vaccine .....	0.29.

“(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is included in more than 1 category of vaccines in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included.”

1993—Subsec. (c). Pub. L. 103-66 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to termination of tax if amounts collected exceeded projected fund liability.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §904(d), Aug. 5, 1997, 111 Stat. 874, provided that: “The amendments made by this section [amending this section and section 4132 of this title] shall take effect on the day after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE

Pub. L. 100-203, title IX, §9201(d), Dec. 22, 1987, 101 Stat. 1330-330, provided that: “The amendments made by this section [enacting this section and section 4132 of this title and amending sections 4221 and 6416 of this title] shall take effect on January 1, 1988.”

#### FLOOR STOCKS TAX

Pub. L. 103-66, title XIII, §13421(c), Aug. 10, 1993, 107 Stat. 566, provided that:

“(1) IMPOSITION OF TAX.—On any taxable vaccine—

“(A) which was sold by the manufacturer, producer, or importer on or before the date of the enactment of this Act [Aug. 10, 1993],

“(B) on which no tax was imposed by section 4131 of the Internal Revenue Code of 1986 (or, if such tax was imposed, was credited or refunded), and

“(C) which is held on such date by any person for sale or use,

there is hereby imposed a tax in the amount determined under section 4131(b) of such Code.

“(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

“(A) LIABILITY FOR TAX.—The person holding any taxable vaccine to which the tax imposed by paragraph (1) applies shall be liable for such tax.

“(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the last day of the 6th month beginning after the date of the enactment of this Act.

“(3) DEFINITIONS.—For purposes of this subsection, terms used in this subsection which are also used in

section 4131 of such Code shall have the respective meanings such terms have in such section.

“(4) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4131 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 4131.”

### § 4132. Definitions and special rules

#### (a) Definitions relating to taxable vaccines

For purposes of this subchapter—

##### (1) Taxable vaccine

The term “taxable vaccine” means any of the following vaccines which are manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing:

- (A) Any vaccine containing diphtheria toxoid.
- (B) Any vaccine containing tetanus toxoid.
- (C) Any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.
- (D) Any vaccine against measles.
- (E) Any vaccine against mumps.
- (F) Any vaccine against rubella.
- (G) Any vaccine containing polio virus.
- (H) Any HIB vaccine.
- (I) Any vaccine against hepatitis A.
- (J) Any vaccine against hepatitis B.
- (K) Any vaccine against chicken pox.
- (L) Any vaccine against rotavirus gastroenteritis.
- (M) Any conjugate vaccine against streptococcus pneumoniae.
- (N) Any trivalent vaccine against influenza or any other vaccine against seasonal influenza.
- (O) Any meningococcal vaccine.
- (P) Any vaccine against the human papillomavirus.

##### (2) Vaccine

The term “vaccine” means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

##### (3) United States

The term “United States” has the meaning given such term by section 4612(a)(4).

##### (4) Importer

The term “importer” means the person entering the vaccine for consumption, use, or warehousing.

#### (b) Credit or refund where vaccine returned to manufacturer, etc., or destroyed

##### (1) In general

Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

- (A) returned (other than for resale) to the person who paid such tax, or
- (B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

#### (2) Claim must be filed within 6 months

Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

#### (3) Condition of allowance of credit or refund

No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

- (A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or
- (B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

#### (4) Tax imposed only once

No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

#### (c) Other special rules

##### (1) Certain uses treated as sales

Any manufacturer, producer, or importer of a vaccine which uses such vaccine before it is sold shall be liable for the tax imposed by section 4131 in the same manner as if such vaccine were sold by such manufacturer, producer, or importer.

##### (2) Treatment of vaccines shipped to United States possessions

Section 4221(a)(2) shall not apply to any vaccine shipped to a possession of the United States.

##### (3) Fractional part of a dose

In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

##### (4) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131.

(Added Pub. L. 100-203, title IX, §9201(a), Dec. 22, 1987, 101 Stat. 1330-329; amended Pub. L. 100-647, title II, §2006(a), Nov. 10, 1988, 102 Stat. 3612; Pub. L. 105-34, title IX, §904(b), (c), Aug. 5, 1997, 111 Stat. 873, 874; Pub. L. 105-277, div. C, title XV, §1503(a), div. J, title III, §3002(a), Oct. 21, 1998, 112 Stat. 2681-741, 2681-905; Pub. L. 106-170, title V, §523(a)(1), (b)(1), Dec. 17, 1999, 113 Stat. 1927; Pub. L. 108-357, title VIII, §§889(a), 890(a), Oct. 22, 2004, 118 Stat. 1643, 1644; Pub. L. 109-432, div. A, title IV, §408(a), (b), Dec. 20, 2006, 120 Stat. 2962; Pub. L. 113-15, §1(a), June 25, 2013, 127 Stat. 476.)

#### AMENDMENTS

2013—Subsec. (a)(1)(N). Pub. L. 113-15 inserted “or any other vaccine against seasonal influenza” before period at end.

2006—Subsec. (a)(1)(O), (P). Pub. L. 109-432 added subpars. (O) and (P).

2004—Subsec. (a)(1)(I) to (M). Pub. L. 108-357, §889(a), added subpar. (I) and redesignated former subpars. (I) to (L) as (J) to (M), respectively.



Subsec. (a)(1)(N). Pub. L. 108-357, §890(a), added subpar. (N).

1999—Subsec. (a)(1)(K). Pub. L. 106-170, §523(b)(1), repealed Pub. L. 105-277, §1503(a). See 1998 Amendment note below.

Subsec. (a)(1)(L). Pub. L. 106-170, §523(a)(1), added subpar. (L).

1998—Subsec. (a)(1)(K). Pub. L. 105-277, §3002(a), added a subpar. (K) identical to that added by Pub. L. 105-277, §1503(a). See below.

Pub. L. 105-277, §1503(a), which directed amendment of section 4132(1) by adding a new subpar. (K) at the end, was repealed by Pub. L. 106-170, §523(b)(1).

1997—Subsec. (a)(1). Pub. L. 105-34, §904(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “The term ‘taxable vaccine’ means any vaccine—

“(A) which is listed in the table contained in section 4131(b)(1), and

“(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.”

Subsec. (a)(2) to (8). Pub. L. 105-34, §904(c), redesignated pars. (6) to (8) as (2) to (4), respectively, and struck out former pars. (2) to (5) which read as follows:

“(2) DPT VACCINE.—The term ‘DPT vaccine’ means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

“(3) DT VACCINE.—The term ‘DT vaccine’ means any vaccine (other than a DPT vaccine) containing diphtheria toxoid or tetanus toxoid.

“(4) MMR VACCINE.—The term ‘MMR vaccine’ means any vaccine against measles, mumps, or rubella. Not more than 1 tax shall be imposed by section 4131 on any MMR vaccine by reason of being a vaccine against more than 1 of measles, mumps, or rubella.

“(5) POLIO VACCINE.—The term ‘polio vaccine’ means any vaccine containing polio virus.”

1988—Subsec. (c). Pub. L. 100-647 added pars. (1) and (2) and redesignated former pars. (1) and (2) as (3) and (4), respectively.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-15, §1(b), June 25, 2013, 127 Stat. 476, provided that:

“(1) SALES, ETC.—The amendment made by this section [amending this section] shall apply to sales and uses on or after the later of—

“(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [June 25, 2013], or

“(B) the date on which the Secretary of Health and Human Services lists any vaccine against seasonal influenza (other than any vaccine against seasonal influenza listed by the Secretary prior to the date of the enactment of this Act) for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

“(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §408(c), Dec. 20, 2006, 120 Stat. 2962, provided that:

“(1) SALES, ETC.—The amendments made by this section [amending this section] shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Dec. 20, 2006].

“(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §889(b), Oct. 22, 2004, 118 Stat. 1643, provided that:

“(1) SALES, ETC.—The amendments made by subsection (a) [amending this section] shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Oct. 22, 2004].

“(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.”

Pub. L. 108-357, title VIII, §890(b), Oct. 22, 2004, 118 Stat. 1644, provided that:

“(1) SALES, ETC.—The amendment made by this section [amending this section] shall apply to sales and uses on or after the later of—

“(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Oct. 22, 2004], or

“(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

“(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, §523(a)(2), Dec. 17, 1999, 113 Stat. 1927, provided that:

“(A) SALES.—The amendment made by this subsection [amending this section] shall apply to vaccine sales after the date of the enactment of this Act [Dec. 17, 1999], but shall not take effect if subsection (b) [see note below] does not take effect.

“(B) DELIVERIES.—For purposes of subparagraph (A), in the case of sales on or before the date described in such subparagraph for which delivery is made after such date, the delivery date shall be considered the sale date.”

Pub. L. 106-170, title V, §523(b)(3), Dec. 17, 1999, 113 Stat. 1928, provided that: “The amendments made by this subsection [amending this section and section 9510 of this title and repealing provisions set out as notes under this section and section 9510 of this title] shall take effect as if included in the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 [Pub. L. 105-277] to which they relate.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. C, title XV, §1503(b), div. I, title III, §3002(b), Oct. 21, 1998, 112 Stat. 2681-741, 2681-905, which provided that amendment of this section by Pub. L. 105-277 was applicable to sales after Oct. 21, 1998, and that delivery date would be considered sale date in the case of sales on or before Oct. 21, 1998, was repealed by Pub. L. 106-170, title V, §523(b)(1), Dec. 17, 1999, 113 Stat. 1927.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective on the day after Aug. 5, 1997, see section 904(d) of Pub. L. 105-34, set out as a note under section 4131 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title II, §2006(c), Nov. 10, 1988, 102 Stat. 3613, provided that: “The amendments made by this section [amending this section and section 9510 of this title] shall take effect as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203].”

## LIMITATION ON CERTAIN CREDITS OR REFUNDS

Pub. L. 105-34, title IX, §904(e), Aug. 5, 1997, 111 Stat. 874, provided that: "For purposes of applying section 4132(b) of the Internal Revenue Code of 1986 with respect to any claim for credit or refund filed before January 1, 1999, the amount of tax taken into account shall not exceed the tax computed under the rate in effect on the day after the date of the enactment of this Act [Aug. 5, 1997]."

**Subchapter D—Recreational Equipment**

Part	
I.	Sporting goods.
[II.	Repealed.]
III.	Firearms.

## AMENDMENTS

1965—Pub. L. 89-44, title II, §205(b), June 21, 1965, 79 Stat. 140, struck out item relating to part II.

**PART I—SPORTING GOODS**

Sec.	
4161.	Imposition of tax.
4162.	Definitions; treatment of certain resales.

## AMENDMENTS

1984—Pub. L. 98-369, div. A, title X, §1015(d), July 18, 1984, 98 Stat. 1019, added item 4162.

**§ 4161. Imposition of tax****(a) Sport fishing equipment****(1) Imposition of tax****(A) In general**

There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

**(B) Limitation on tax imposed on fishing rods and poles**

The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed \$10.

**(2) 3 percent rate of tax for electric outboard motors**

In the case of an electric outboard motor, paragraph (1) shall be applied by substituting "3 percent" for "10 percent".

**(3) 3 percent rate of tax for tackle boxes**

In the case of fishing tackle boxes, paragraph (1) shall be applied by substituting "3 percent" for "10 percent".

**(4) Parts or accessories sold in connection with taxable sale**

In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof.

**(b) Bows and arrows, etc.****(1) Bows****(A) In general**

There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

**(B) Archery equipment**

There is hereby imposed on the sale by the manufacturer, producer, or importer—

(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

(ii) of any quiver, broadhead, or point suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.

**(2) Arrows****(A) In general**

There is hereby imposed on the first sale by the manufacturer, producer, or importer of any shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

(i) measures 18 inches overall or more in length, or

(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in paragraph (1)(A),

a tax equal to 39 cents per shaft.

**(B) Exemption for certain wooden arrow shafts**

Subparagraph (A) shall not apply to any shaft consisting of all natural wood with no laminations or artificial means of enhancing the spine of such shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

(i) measures  $\frac{5}{16}$  of an inch or less in diameter, and

(ii) is not suitable for use with a bow described in paragraph (1)(A).

**(C) Adjustment for inflation****(i) In general**

In the case of any calendar year beginning after 2005, the 39-cent amount specified in subparagraph (A) shall be increased by an amount equal to the product of—

(I) such amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting "2004" for "2016" in subparagraph (A)(ii) thereof.

**(ii) Rounding**

If any increase determined under clause (i) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent.

**(3) Coordination with subsection (a)**

No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 489; Pub. L. 89-44, title II, §205(a), June 21, 1965, 79 Stat. 140; Pub. L. 92-558, title II, §201(a), Oct. 25, 1972, 86 Stat. 1173; Pub. L. 98-369, div. A, title X, §§1015(a), 1017(a), (b), July 18, 1984, 98 Stat. 1017, 1021; Pub.

L. 99-514, title XVIII, §1899A(48), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 105-34, title XIV, §1433(a), Aug. 5, 1997, 111 Stat. 1051; Pub. L. 108-357, title III, §§332(a)–(c), 333(a), Oct. 22, 2004, 118 Stat. 1477, 1478; Pub. L. 108-493, §1(a)–(c), Dec. 23, 2004, 118 Stat. 3984; Pub. L. 109-59, title XI, §1117(a), (b), Aug. 10, 2005, 119 Stat. 1951; Pub. L. 109-135, title IV, §412(uu), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110-343, div. C, title V, §503(a), Oct. 3, 2008, 122 Stat. 3877; Pub. L. 115-97, title I, §11002(d)(11), Dec. 22, 2017, 131 Stat. 2062.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

#### AMENDMENTS

2017—Subsec. (b)(2)(C)(i)(II). Pub. L. 115-97 substituted “for ‘2016’ in subparagraph (A)(ii)” for “for ‘1992’ in subparagraph (B)”.

2008—Subsec. (b)(2)(B), (C). Pub. L. 110-343 added subpar. (B) and redesignated former subpar. (B) as (C).

2005—Subsec. (a)(1). Pub. L. 109-59, §1117(a), reenacted heading without change and amended text of par. (1) generally, designating existing provisions as subpar. (A), inserting subpar. heading, and adding subpar. (B).

Subsec. (a)(2). Pub. L. 109-135 amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—In the case of an electric outboard motor or a sonar device suitable for finding fish, paragraph (1)(A) shall be applied by substituting ‘3 percent’ for ‘10 percent’.

“(B) \$30 LIMITATION ON TAX IMPOSED ON SONAR DEVICES SUITABLE FOR FINDING FISH.—The tax imposed by paragraph (1)(A) on any sonar device suitable for finding fish shall not exceed \$30.”

Pub. L. 109-59, §1117(b), substituted “paragraph (1)(A)” for “paragraph (1)” in two places.

2004—Subsec. (a)(3), (4). Pub. L. 108-357, §333(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 108-357, §332(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions imposing a tax on the sale of any bow which has a peak draw weight of 30 pounds or more, any part or accessory, and any quiver or broadhead suitable for use with an arrow described in par. (2), for provisions imposing a tax on the sale of any bow which has a draw weight of 10 pounds or more, any part of accessory, and any quiver suitable for use with arrows described in par. (2).

Subsec. (b)(1)(B)(ii). Pub. L. 108-493, §1(c), substituted “quiver, broadhead, or point” for “quiver or broadhead”.

Subsec. (b)(2). Pub. L. 108-493, §1(b), amended heading and text of par. (2) generally, substituting provisions relating to arrows for provisions relating to arrow components.

Pub. L. 108-357, §332(c), substituted “Arrow components” for “Arrows” in heading and inserted “(other than broadheads)” after “point” in introductory provisions.

Subsec. (b)(3), (4). Pub. L. 108-493, §1(a), repealed Pub. L. 108-357, §332(b). See note below.

Pub. L. 108-357, §332(b), which directed the amendment of subsec. (b) by adding par. (3), relating to arrows, and redesignating former par. (3) as (4), was repealed by Pub. L. 108-493, §1(a). See Construction of 2004 Amendment note below.

1997—Subsec. (b). Pub. L. 105-34 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) imposing taxes on bows and arrows and parts and accessories and providing for coordination of taxes under subsections. (a) and (b).

1986—Subsec. (b)(1)(B)(ii). Pub. L. 99-514 substituted a comma for the period at end.

1984—Subsec. (a). Pub. L. 98-369, §1015(a), in amending subsec. (a) generally, designated existing provisions as

par. (1), substituted “any article of sport fishing equipment by the manufacturer, producer, or importer” for “fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer”, and added pars. (2) and (3).

Subsec. (b)(1)(B). Pub. L. 98-369, §1017(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(2)(A). Pub. L. 98-369, §1017(b)(2), struck out “(other than a fishing reel)” after “part or accessory”.

Subsec. (b)(3). Pub. L. 98-369, §1017(b)(1), added par. (3).

1972—Subsec. (a). Pub. L. 92-558, §201(a)(1), designated existing provisions as subsec. (a) and inserted catchline.

Subsec. (b). Pub. L. 92-558, §201(a)(2), added subsec. (b).

1965—Pub. L. 89-44 removed 10 percent tax on equipment for billiards, pool, bowling, trap shooting, cricket, croquet, badminton, curling, deck tennis, golf, lacrosse, polo, skiing, squash, table tennis, and tennis, and retained tax only for fishing equipment.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title V, §503(b), Oct. 3, 2008, 122 Stat. 3877, provided that: “The amendments made by this section [amending this section] shall apply to shafts first sold after the date of enactment of this Act [Oct. 3, 2008].”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, §1117(c), Aug. 10, 2005, 119 Stat. 1951, provided that: “The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.”

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108-493, §1(d), Dec. 23, 2004, 118 Stat. 3985, provided that: “The amendments made by subsections (b) and (c) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after March 31, 2005.”

Pub. L. 108-357, title III, §332(d), Oct. 22, 2004, 118 Stat. 1478, provided that: “The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act [Oct. 22, 2004].”

Pub. L. 108-357, title III, §333(b), Oct. 22, 2004, 118 Stat. 1478, provided that: “The amendments made this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIV, §1433(b), Aug. 5, 1997, 111 Stat. 1052, provided that: “The amendment made by subsection (a) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 1997.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1015(a) of Pub. L. 98-369 applicable with respect to articles sold by the manufacturer, producer, or importer after Sept. 30, 1984, see section 1015(e) of Pub. L. 98-369, set out as an Effective Date note under section 4162 of this title.

Pub. L. 98-369, div. A, title X, §1017(c), July 18, 1984, 98 Stat. 1021, provided that: “The amendments made by

this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-558, title II, § 201(b), Oct. 25, 1972, 86 Stat. 1173, as amended by Pub. L. 93-313, June 8, 1974, 88 Stat. 238, provided that: “The amendments made by subsection (a) of this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer thereof on or after January 1, 1975.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VII, § 701(a), June 21, 1965, 79 Stat. 155, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by titles I and II of this Act [enacting sections 4094 and 6424 of this title, amending this section and sections 4055, 4057, 4061, 4091, 4216, 4218, 4221, 4222, 4227, 6011, 6206, 6412, 6416, 6675, 7210, 7603, 7604, and 7605 of this title, repealing sections 4001 to 4003, 4011 to 4013, 4021, 4022, 4031, 4051 to 4053, 4111, 4121, 4131, 4141 to 4143, 4151, 4171 to 4173, 4191, 4192, 4201, 4211, and 4224 of this title, and amending provisions set out as a note under section 120 of Title 23, Highways] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965].

“(2) SPECIAL RULES.—The amendments made by sections 201(b)(2) [amending section 4061 of this title] (relating to automobile parts and accessories) and 202(a) [amending section 4091 of this title] (relating to lubricating oil) shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 202(b) [enacting section 6424 of this title] and (c) [enacting section 4094 and amending sections 6206, 6675, 7210, 7603, 7604, and 7605 of this title] (relating to payments with respect to lubricating oil) shall take effect January 1, 1966. The amendments made by section 203 [repealing sections 4111, 4121, and 4131 of this title], insofar as they relate to the tax imposed by section 4131 (relating to electric light bulbs) of the Code, and the amendments made by section 208 [amending sections 4216, 4218, 4221, 4222, and 4227], insofar as they relate to the tax imposed by section 4061(b) (relating to automotive parts and accessories), section 4091 (relating to lubricating oil), or section 4131 (relating to electric light bulbs) of the Code, shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 207 [amending sections 4216 and 6416 of this title] (relating to partial payments; sales of installment accounts) and 209(a) [amending section 6412 of this title] (relating to floor stocks refunds on passenger automobiles, etc.) shall take effect on the day after the date of the enactment of this Act [June 21, 1965]. The amendments made by section 210 [amending provisions set out as a note under section 120 of Title 23, Highways] (relating to Highway Trust Fund) shall take effect January 1, 1966.

“(3) INSTALLMENT SALES, ETC.—For purposes of paragraphs (1) and (2), an article shall not be considered sold before the day after the date of the enactment of this Act [June 21, 1965] or before January 1, 1966, as the case may be, unless possession or right to possession passes to the purchaser before such day or such date. In the case of—

“(A) a lease,

“(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

“(C) a conditional sale, or

“(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into before such day or such date, payments made on or after such day or such date with respect to

the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold on or after such day or such date, if the lessor or vendor establishes that the amount of payments payable on or after such day or such date with respect to such article has been reduced by an amount equal to the tax reduction applicable with respect to the lease or sale of such article.

“(4) ELECTRIC LIGHT BULBS USED IN MANUFACTURE OF ARTICLES UPON WHICH TAX IS REPEALED.—For purposes of applying section 4218(a) of the Code with respect to the use of an electric light bulb or tube by the manufacturer, producer, or importer thereof, and for purposes of applying section 4221(d)(6)(A) of the Code with respect to the sale of an electric light bulb or tube for use in further manufacture, an article which was taxable under chapter 32 of the Code on the date of the enactment of this Act [June 21, 1965] shall, during the period beginning with the day after the date of the enactment of this Act through December 31, 1965, be treated as an article taxable under such chapter.”

#### CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-493, § 1(a), Dec. 23, 2004, 118 Stat. 3984, provided that: “Subsection (b) of section 332 of the American Jobs Creation Act of 2004 [Pub. L. 108-357], and the amendments made by such subsection [amending this section], are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsection and amendments had never been enacted.”

### § 4162. Definitions; treatment of certain resales

#### (a) Sport fishing equipment defined

For purposes of this part, the term “sport fishing equipment” means—

- (1) fishing rods and poles (and component parts therefor),
- (2) fishing reels,
- (3) fly fishing lines, and other fishing lines not over 130 pounds test,
- (4) fishing spears, spear guns, and spear tips,
- (5) items of terminal tackle, including—
  - (A) leaders,
  - (B) artificial lures,
  - (C) artificial baits,
  - (D) artificial flies,
  - (E) fishing hooks,
  - (F) bobbers,
  - (G) sinkers,
  - (H) snaps,
  - (I) drayles, and
  - (J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and

(6) the following items of fishing supplies and accessories—

- (A) fish stringers,
- (B) creels,
- (C) tackle boxes,
- (D) bags, baskets, and other containers designed to hold fish,
- (E) portable bait containers,
- (F) fishing vests,
- (G) landing nets,
- (H) gaff hooks,
- (I) fishing hook disgorgers, and
- (J) dressing for fishing lines and artificial flies,

(7) fishing tip-ups and tilts,

(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers, and

(9) electric outboard boat motors.

**(b) Treatment of certain resales**

**(1) In general**

If—

(A) the manufacturer, producer, or importer sells any article taxable under section 4161(a) to any person,

(B) the constructive sale price rules of section 4216(b) do not apply to such sale, and

(C) such person (or any other person) sells such article to a related person with respect to the manufacturer, producer, or importer,

then such related person shall be liable for tax under section 4161 in the same manner as if such related person were the manufacturer of the article.

**(2) Credit for tax previously paid**

If—

(A) tax is imposed on the sale of any article by reason of paragraph (1), and

(B) the related person establishes the amount of the tax which was paid on the sale described in paragraph (1)(A),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

**(3) Related person**

For purposes of this subsection, the term “related person” has the meaning given such term by section 465(b)(3)(C).

**(4) Regulations**

Except to the extent provided in regulations, rules similar to the rules of this subsection shall also apply in cases (not described in paragraph (1)) in which intermediaries or other devices are used for purposes of reducing the amount of the tax imposed by section 4161(a).

(Added Pub. L. 98-369, div. A, title X, §1015(b), July 18, 1984, 98 Stat. 1017; amended Pub. L. 99-514, title II, §201(d)(7)(C), (12), title XVIII, §1878(b), Oct. 22, 1986, 100 Stat. 2141, 2142, 2903; Pub. L. 108-357, title III, §334(a), (b), Oct. 22, 2004, 118 Stat. 1478.)

**AMENDMENTS**

2004—Subsec. (a)(8) to (10). Pub. L. 108-357, §334(a), inserted “and” at end of par. (8), substituted a period for “, and” at end of par. (9), and struck out par. (10) which read as follows: “sonar devices suitable for finding fish.”

Subsecs. (b), (c). Pub. L. 108-357, §334(b), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “For purposes of this part, the term ‘sonar device suitable for finding fish’ shall not include any sonar device which is—

“(1) a graph recorder,

“(2) a digital type,

“(3) a meter readout, or

“(4) a combination graph recorder or combination meter readout.”

1986—Subsec. (a)(6)(I). Pub. L. 99-514, §1878(b), amended subpar. (I) generally, substituting “hook” for “hood”.

Subsec. (c)(3). Pub. L. 99-514, §201(d)(7)(C), (12), made identical amendments, substituting “section 465(b)(3)(C)” for “section 168(e)(4)(D)”.

**EFFECTIVE DATE OF 2004 AMENDMENT**

Pub. L. 108-357, title III, §334(c), Oct. 22, 2004, 118 Stat. 1478, provided that: “The amendments made this sec-

tion [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.”

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by section 201(d)(7)(C), (12) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(C), (12) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Amendment by section 1878(b) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

**EFFECTIVE DATE**

Pub. L. 98-369, div. A, title X, §1015(e), July 18, 1984, 98 Stat. 1019, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 4161 and 6302 of this title] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.

“(2) TREATMENT OF CERTAIN RESALES.—Subsection (c) of section 4162 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treatment of certain resales), as added by this section, shall apply to sales by related persons (as defined in such subsection) after the date of the enactment of this Act [July 18, 1984].”

**PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**[PART II—REPEALED]**

**[§§ 4171 to 4173. Repealed. Pub. L. 89-44, title II, § 205(b), June 21, 1965, 79 Stat. 140]**

Section 4171, act Aug. 16, 1954, ch. 736, 68A Stat. 489, imposed a 10 percent tax on cameras, camera lenses, and unexposed photographic film on rolls and a 5 percent tax on electric motion or still picture projectors of the household type.

Section 4172, act Aug. 16, 1954, ch. 736, 68A Stat. 490, defined certain vendees of unexposed films as manufacturers for purposes of payment of the tax imposed by section 4171.

Section 4173, act Aug. 16, 1954, ch. 736, 68A Stat. 490, granted exemptions for specified types of cameras, lenses of specified focal lengths, and certain types of film.

**EFFECTIVE DATE OF REPEAL**

Repeal applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 84-44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

**PART III—FIREARMS**

Sec.	
4181.	Imposition of tax.
4182.	Exemptions.

**§ 4181. Imposition of tax**

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

**Articles taxable at 10 percent—**

Pistols.  
Revolvers.

**Articles taxable at 11 percent—**

Firearms (other than pistols and revolvers).  
Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

**§ 4182. Exemptions****(a) Machine guns and short barrelled firearms**

The tax imposed by section 4181 shall not apply to any firearm on which the tax provided by section 5811 has been paid.

**(b) Sales to defense department**

No firearms, pistols, revolvers, shells, and cartridges purchased with funds appropriated for the military department shall be subject to any tax imposed on the sale or transfer of such articles.

**(c) Small manufacturers, etc.****(1) In general**

The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.

**(2) Controlled groups**

All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).

**(d) Records**

Notwithstanding the provisions of sections 922(b)(5) and 923(g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for the aforesaid types of ammunition.

(Aug. 16, 1954, ch. 736, 68A Stat. 490; Pub. L. 91-128, §5, Nov. 26, 1969, 83 Stat. 269; Pub. L. 109-59, title XI, §11131(a), Aug. 10, 2005, 119 Stat. 1959.)

**AMENDMENTS**

2005—Subsecs. (c), (d). Pub. L. 109-59 added subsec. (c) and redesignated former subsec. (c) as (d).

1969—Subsec. (c). Pub. L. 91-128 added subsec. (c).

**EFFECTIVE DATE OF 2005 AMENDMENT**

Pub. L. 109-59, title XI, §11131(b), Aug. 10, 2005, 119 Stat. 1959, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

“(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.”

**SHORT TITLE OF 1969 AMENDMENT**

Pub. L. 91-128, §1(a), Nov. 26, 1969, 83 Stat. 261, provided that: “This Act [amending this section and sections 4911, 4912, 4914, 4915, 4919, 4920, 6011, and 6680 of this title and enacting provisions set out as notes under section 6680 of this title] may be cited as the ‘Interest Equalization Tax Extension Act of 1969’.”

**Subchapter E—Medical Devices**

Sec.

4191. Medical devices.

**PRIOR PROVISIONS**

A prior subchapter E consisted of sections 4191, 4192, 4201, and 4211 of this title, prior to repeal by Pub. L. 89-44, title II, §206, title VII, §701(a), June 21, 1965, 79 Stat. 140, 155, applicable with respect to articles sold on or after June 22, 1965.

Section 4191, act Aug. 16, 1954, ch. 736, 68A Stat. 491, imposed a tax equivalent to 10 percent of the selling price upon over fifty specified office and business machines including adding machines, bookkeeping machines, cash registers, punch card and computing machines, typewriters, and tabulating machines.

Section 4192, acts Aug. 16, 1954, ch. 736, 68A Stat. 491; Sept. 2, 1958, Pub. L. 85-859, title I, §114(a), 72 Stat. 1278, granted an exemption for cash registers used in registering over-the-counter retail sales and for stencil cutting machines.

Section 4201, acts Aug. 16, 1954, ch. 736, 68A Stat. 492; Sept. 14, 1960, Pub. L. 86-779, §9(a), 74 Stat. 1003, imposed a tax equivalent to 10 percent of the selling price on mechanical pencils, fountain pens, and ballpoint pens and 10 cents on mechanical cigarette lighters.

Section 4211, act Aug. 16, 1954, ch. 736, 68A Stat. 492, imposed a tax of 2 cents per 1,000 for matches, except fancy wooden matches, and a tax of 5½ cents per 1,000 on fancy wooden matches.

**§ 4191. Medical devices****(a) In general**

There is hereby imposed on the sale of any taxable medical device by the manufacturer, producer, or importer a tax equal to 2.3 percent of the price for which so sold.

**(b) Taxable medical device**

For purposes of this section—

**(1) In general**

The term “taxable medical device” means any device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans.

**(2) Exemptions**

Such term shall not include—

- (A) eyeglasses,
- (B) contact lenses,
- (C) hearing aids, and
- (D) any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.

**(c) Moratorium**

The tax imposed under subsection (a) shall not apply to sales during the period beginning on January 1, 2016, and ending on December 31, 2017.

(Added Pub. L. 111-152, title I, §1405(a)(1), Mar. 30, 2010, 124 Stat. 1064; amended Pub. L. 114-113, div. Q, title I, §174(a), Dec. 18, 2015, 129 Stat. 3071.)

#### REFERENCES IN TEXT

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is classified to section 321(h) of Title 21, Food and Drugs.

#### PRIOR PROVISIONS

For prior sections 4191, 4192, 4201, and 4211, see Prior Provisions note set out preceding this section.

#### AMENDMENTS

2015—Subsec. (c). Pub. L. 114-113 added subsec. (c).

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §174(b), Dec. 18, 2015, 129 Stat. 3072, provided that: “The amendment made by this section [amending this section] shall apply to sales after December 31, 2015.”

#### EFFECTIVE DATE

Pub. L. 111-152, title I, §1405(c), Mar. 30, 2010, 124 Stat. 1065, provided that: “The amendments made by this section [enacting this section and amending sections 4221 and 6416 of this title] shall apply to sales after December 31, 2012.”

### Subchapter F—Special Provisions Applicable to Manufacturers Tax

Sec.	
4216.	Definition of price.
4217.	Leases.
4218.	Use by manufacturer or importer considered sale.
4219.	Application of tax in case of sales by other than manufacturer or importer.
[4220 to 4225. Repealed.]	

#### AMENDMENTS

1958—Pub. L. 85-859, title I, §§117(d), 119(b)(3), Sept. 2, 1958, 72 Stat. 1281, 1286, substituted “Leases” for “Lease considered sale” in item 4217, and struck out items 4220 to 4225.

1956—Act June 29, 1956, ch. 462, title II, §207(b), 70 Stat. 392, added item 4226 and redesignated former item 4226 as 4227.

### § 4216. Definition of price

#### (a) Containers, packing and transportation charges.

In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary in accordance with the regulations.

#### (b) Constructive sale price

##### (1) In general

If an article is—

- (A) sold at retail,
- (B) sold on consignment, or

(C) sold (otherwise than through an arm’s length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. This paragraph shall not apply if paragraph (2) applies.

#### (2) Special rule

If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case may be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm’s length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph, and

(C) the transaction is an arm’s length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

#### (3) Constructive sale price in case of certain articles

Except as provided in paragraph (4), for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors,

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm’s-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 6416(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be

the lower of the constructive sale price determined under this paragraph or paragraph (4).

**(4) Constructive sale price in case of certain other articles**

For purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells (except for tax-free sales) only to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer,

(B) the distributor regularly sells (except for tax-free sales) such article only to retailers, and

(C) the normal method of sales for such articles within the industry by manufacturers, producers, or importers is to sell such articles in arm's-length transactions to distributors,

the constructive sale price for such article shall be the price at which such article is sold to retailers by the distributor, reduced by a percentage of such price equal to the percentage which (i) the difference between the price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, and the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of (ii) the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustment under subsections (a) and (e) and under section 6416(b)(1).

**(5) Definition of lowest price**

For purposes of paragraphs (1) and (3), the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

**(c) Partial payments**

In the case of—

(1) a lease (other than a lease to which section 4217(b) applies),

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sale, or

(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

there shall be paid upon each payment with respect to the article a percentage of such payment equal to the rate of tax in effect on the date such payment is due.

**(d) Sales of installment accounts**

If installment accounts, with respect to payments on which tax is being computed as pro-

vided in subsection (c), are sold or otherwise disposed of, then subsection (c) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with respect to which credit or refund is allowable by reason of section 6416(b)(5)), but instead—

(1) there shall be paid an amount equal to the difference between (A) the tax previously paid on the payments on such installment accounts, and (B) the total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)); except that

(2) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under paragraph (1) shall not exceed the sum of the amounts computed by multiplying (A) the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment by (B) the rate of tax under this chapter in effect on the date such unpaid installment payment is or was due.

The sum of the amounts payable under this subsection and subsection (c) in respect of the sale of any article shall not exceed the total tax.

**(e) Exclusion of local advertising charge from sale price**

**(1) Exclusion**

In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

**(2) Aggregate amount which may be excluded**

In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which



such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

**(3) No adjustment for other advertising charges**

Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

**(4) Local advertising defined**

For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(Aug. 16, 1954, ch. 736, 68A Stat. 493; Aug. 9, 1955, ch. 677, §§1, 2, 69 Stat. 613; Pub. L. 85-859, title I, §§115, 116, 117(b), Sept. 2, 1958, 72 Stat. 1279-1281; Pub. L. 86-781, §1, Sept. 14, 1960, 74 Stat. 1017; Pub. L. 87-770, §2(a), Oct. 9, 1962, 76 Stat. 768; Pub. L. 87-858, §1(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 89-44, title II, §§207(a), (b), 208(a), (b), title VIII, §801(b), June 21, 1965, 79 Stat. 140, 141, 158; Pub. L. 91-172, title IX, §932(a), Dec. 30, 1969, 83 Stat. 725; Pub. L. 91-614, title III, §301(a), (b), Dec. 31, 1970, 84 Stat. 1844; Pub. L. 92-178, title IV, §401(g)(4), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94-455, title XIX, §§1904(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 95-458, §1(a), (b), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 98-369, div. A, title VII, §735(c)(6), July 18, 1984, 98 Stat. 982.)

**AMENDMENTS**

1984—Subsec. (b)(1). Pub. L. 98-369, §735(c)(6)(A), in provisions following subpar. (C) struck out "(other than an article the sale of which is taxable under section 4061(a))" in second sentence, before "the computation under the preceding sentence", and struck out provision that in the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost).

Subsec. (b)(2)(B) to (D). Pub. L. 98-369, §735(c)(6)(B), inserted "and" at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which related to articles upon which tax is imposed under section 4061(a) of this title.

Subsec. (b)(3). Pub. L. 98-369, §735(c)(6)(D), substituted "paragraph (4)" for "paragraphs (4) and (5)".

Subsec. (b)(5), (6). Pub. L. 98-369, §735(c)(6)(C), (E), redesignated par. (6) as par. (5), substituted "(1) and (3)"

for "(1), (3) and (5)", and struck out former par. (5) which related to constructive sale price in the case of automobiles, trucks, etc.

Subsec. (f). Pub. L. 98-369, §735(c)(6)(F), struck out subsec. (f) which related to certain trucks incorporating used components.

1978—Subsec. (b)(1). Pub. L. 95-458 substituted "article sold at retail (other than an article the sale of which is taxable under section 4061(a)), the computation" for "article sold at retail, the computation" and inserted provision requiring the computation of tax on articles taxable under section 4061(a) which are sold at retail to be a percentage, but not greater than 100% of the actual selling price based on the highest price for which the articles are sold by manufacturers and producers in the ordinary course of trade, determined without regard to individual manufacturer's or producer's cost.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94-455, §§1904(a)(2)(B), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" in two places in par. (1), and substituted "subsections (a) and (e)" for "subsections (a) and (f)" in pars. (3), (4), and (5), after "or readjustments under".

Subsecs. (d) to (g). Pub. L. 94-455, §1904(a)(2)(A), redesignated subsecs. (e) to (g) as (d) to (f), respectively.

1971—Subsec. (b)(2)(C), (5). Pub. L. 92-178, §401(g)(4)(A), substituted "(relating to trucks, buses, tractor, etc.)" for "(relating to automobiles, trucks, etc.)".

Subsec. (g). Pub. L. 92-178, §401(g)(4)(B), inserted reference to "tractors," after "buses,".

1970—Subsec. (b)(3). Pub. L. 91-614, §301(b), substituted "Constructive sale price" for "Fair market price" in heading, "constructive sale price" for "fair market price" three places in text, substituted "paragraphs (4) and (5)" for "paragraph (4)" and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(4). Pub. L. 91-614, §301(b)(2), substituted "Constructive sale price" for "Fair market price" in heading, "constructive sale price" for "fair market price" in text, and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(5), (6). Pub. L. 91-614, §301(a), added pars. (5) and (6).

1969—Subsec. (b)(3), (4). Pub. L. 91-172 added pars. (3) and (4).

1965—Subsec. (b)(2). Pub. L. 89-44, §208(a), struck out reference to special dealers and to articles upon which tax is imposed under section 4191 or 4211 of this title.

Subsec. (b)(3). Pub. L. 89-44, §208(b), struck out par. (3) which related to special dealers.

Subsec. (c). Pub. L. 89-44, §207(a), struck out "that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment" in text following par. (4) and inserted in lieu thereof "a percentage of such payment equal to the rate of tax in effect on the date such payment is due".

Subsec. (e)(1). Pub. L. 89-44, §207(b)(1), substituted "total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)) for "total tax".

Subsec. (e)(2). Pub. L. 89-44, §207(b)(2), substituted, as factor (A) in the formula for computing the maximum amount, the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment for the amount for which such accounts are sold, and, as factor (B) in the formula, the rate of tax on the date that such unpaid installment payment is or was due for the rate of tax which applied on the day on which the transaction giving rise to such installment accounts took place.

Subsec. (g). Pub. L. 89-44, §801(b), added subsec. (g).

1962—Subsec. (b)(2)(C). Pub. L. 87-858 inserted "in the case of articles upon which tax is imposed under section 4061(a) (relating to automobiles, trucks, etc.), 4191 (relating to business machines), or 4211 (relating to matches)," before "the normal method".

Subsec. (f)(4)(C). Pub. L. 87-770 substituted “, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster” for “or appears in a newspaper”.

1960—Subsec. (f). Pub. L. 86-781 added subsec. (f).

1958—Subsec. (b). Pub. L. 85-859, §115, inserted provisions in par. (1) requiring, in the case of an article sold at retail, the computation to be on either the price for which the article is sold, or the highest price for which the articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, whichever is lower, and added pars. (2) and (3).

Subsec. (c). Pub. L. 85-859, §117(b), substituted “section 4217(b)” for “subsection (d)”.

Subsec. (d). Pub. L. 85-859, §117(b), repealed subsec. (d) which related to tax on leases of certain trailers.

Subsec. (e). Pub. L. 85-859, §116, added subsec. (e).

1955—Subsec. (c)(1). Act Aug. 9, 1955, §1, inserted “(other than a lease to which subsection (d) applies)”.

Subsec. (d). Act Aug. 9, 1955, §2, added subsec. (d).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-458, §1(c), Oct. 14, 1978, 92 Stat. 1255, provided that: “The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act [Oct. 14, 1978].”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(2) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92-178, set out as a note under section 4061 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-614, title III, §301(c), Dec. 31, 1970, 84 Stat. 1844, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply with respect to articles sold after December 31, 1970; except that section 4216(b)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall also apply to (1) the application of paragraph (1) of such section 4216(b) to articles sold after June 30, 1962, and before January 1, 1971, and (2) the application of paragraph (3) of such section 4216(b) to articles sold after December 31, 1969, and before January 1, 1971.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §932(b), Dec. 30, 1969, 83 Stat. 725, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold after December 31, 1969.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 207(a), (b) of Pub. L. 89-44 effective June 22, 1965, and amendment by section 208 of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, or 4131 and, as to such taxes, applicable with re-

spect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4161 of this title.

Pub. L. 89-44, title VIII, §801(e), June 21, 1965, 79 Stat. 158, provided that: “The amendments made by subsections (a), (b), and (d) [amending this section and sections 4063, 4221, and 6416 of this title] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965]. The amendment made by subsection (c) [amending section 4221 of this title] shall apply with respect to articles sold on or after January 1, 1965.”

#### EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87-858, §1(b), Oct. 23, 1962, 76 Stat. 1134, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after October 1, 1962.”

Pub. L. 87-770, §2(b), Oct. 9, 1962, 76 Stat. 768, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of the enactment of this Act [Oct. 9, 1962].”

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-781, §3, Sept. 14, 1960, 74 Stat. 1018, provided that: “The amendments made by this Act [amending this section and section 6416 of this title] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than twenty days after the date of the enactment of this Act [Sept. 14, 1960].”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 677, §4, 69 Stat. 614, as amended by act Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095, provided that: “The amendments made by subsection (a) [probably should refer to amendments made by sections 1 to 3 of act Aug. 9, 1955, amending this section and section 4217 of this title] shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this act [Aug. 9, 1955]. In the application of section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this Act) to any article which has been leased before the effective date specified in the preceding sentence, under regulations prescribed by the Secretary of the Treasury or his delegate—

“(1) the fair market value of such article shall be the fair market value determined as of such effective date;

“(2) only payments under a lease received on or after such effective date shall be considered in determining when the total tax (as defined in such section 4216(d)) has been paid;

“(3) any lease existing on such effective date, or if there is none, the first lease entered into after such effective date, shall be considered an initial lease (except that fair market value shall be determined as provided in paragraph (1) of this sentence); and

“(4) any lease existing on such effective date shall be considered as having been entered into on such date.”

### § 4217. Leases

#### (a) Lease considered as sale

For purposes of this chapter, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such arti-

cle) by the manufacturer, producer, or importer shall be considered a sale of such article.

**(b) Limitation on tax**

In the case of any lease described in subsection (a) of an article taxable under this chapter, if the tax under this chapter is based on the price for which such articles are sold, there shall be paid on each lease payment with respect to such article a percentage of such payment equal to the rate of tax in effect on the date of such payment, until the total of the tax payments under such lease and any prior lease to which this subsection applies equals the total tax.

**(c) Definition of total tax**

For purposes of this section, the term “total tax” means—

(1) except as provided in paragraph (2), the tax computed on the constructive sale price for such article which would be determined under section 4216(b) if such article were sold at retail on the date of the first lease to which subsection (b) applies; or

(2) if the first lease to which subsection (b) applies is not the first lease of the article, the tax computed on the fair market value of such article on the date of the first lease to which subsection (b) applies.

Any such computation of tax shall be made at the applicable rate specified in this chapter in effect on the date of the first lease to which subsection (b) applies.

**(d) Special rules**

**(1) Lessor must also be engaged in selling**

Subsection (b) shall not apply to any lease of an article unless at the time of making the lease, or any prior lease of such article to which subsection (b) applies, the person making the lease or prior lease was also engaged in the business of selling in arm's length transactions the same type and model of article.

**(2) Sale before total tax becomes payable**

If the taxpayer sells an article before the total tax has become payable, then the tax payable on such sale shall be whichever of the following is the smaller:

(A) the difference between (i) the tax imposed on lease payments under leases of such article to which subsection (b) applies, and (ii) the total tax, or

(B) a tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold.

For purposes of subparagraph (B), if the sale is at arm's length, section 4216(b) shall not apply.

**(3) Sale after total tax has become payable**

If the taxpayer sells an article after the total tax has become payable, no tax shall be imposed under this chapter on such sale.

**(e) Leases of automobiles subject to gas guzzler tax**

**(1) In general**

In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing pro-

visions of this section shall not apply, but, for purposes of this chapter—

(A) the first lease of such automobile by the manufacturer shall be considered to be a sale, and

(B) any lease of such automobile by the manufacturer after the first lease of such automobile shall not be considered to be a sale.

**(2) Payment of tax**

In the case of a lease described in paragraph

(1)(A)—

(A) there shall be paid by the manufacturer on each lease payment that portion of the total gas guzzler tax which bears the same ratio to such total gas guzzler tax as such payment bears to the total amount to be paid under such lease,

(B) if such lease is canceled, or the automobile is sold or otherwise disposed of, before the total gas guzzler tax is payable, there shall be paid by the manufacturer on such cancellation, sale, or disposition the difference between the tax imposed under subparagraph (A) on the lease payments and the total gas guzzler tax, and

(C) if the automobile is sold or otherwise disposed of after the total gas guzzler tax is payable, no tax shall be imposed under section 4064 on such sale or disposition.

**(3) Definitions**

For purposes of this subsection—

**(A) Manufacturer**

The term “manufacturer” includes a producer or importer.

**(B) Total gas guzzler tax**

The term “total gas guzzler tax” means the tax imposed by section 4064, computed at the rate in effect on the date of the first lease.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 9, 1955, ch. 677, §3, 69 Stat. 614; Pub. L. 85-859, title I, §117(a), Sept. 2, 1958, 72 Stat. 1280; Pub. L. 94-455, title XIX, §1904 (a)(3), Oct. 4, 1976, 90 Stat. 1811; Pub. L. 95-618, title II, §201(d), Nov. 9, 1978, 92 Stat. 3184.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-618 added subsec. (e).

1976—Subsec. (d)(4). Pub. L. 94-455 struck out par. (4) relating to special transitional rules applicable to leases.

1958—Pub. L. 85-859 substituted “Leases” for “Lease considered as sale” in section catchline.

Subsec. (a). Pub. L. 85-859 redesignated existing provisions as subsec. (a) and struck out provisions which made subsection inapplicable to the lease of an article upon which the tax has been paid in the manner provided in section 4216(d)(1) or the total tax has been paid in the manner provided in section 4216(d)(2) of this title.

Subsecs. (b) to (d). Pub. L. 85-859 added subsecs. (b) to (d).

1955—Act Aug. 9, 1955, exempted lease of an article upon which tax has been paid under section 4216(d)(1) or section 4216(d)(2) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section

201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1955 AMENDMENT

Section effective on first day of first month which begins more than ten days after Aug. 9, 1955, see section 4 of act Aug. 9, 1955, set out as a note under section 4216 of this title.

APPLICATION OF LEASES OF UTILITY TRAILERS

Pub. L. 85-859, title I, § 117(c), Sept. 2, 1958, 72 Stat. 1281, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4216 of this title] shall not apply to any lease of an article if section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, prior subsec. (d) of section 4216 of this title] applied to any lease of such article before the effective date specified in section 1(c) of this Act."

**§ 4218. Use by manufacturer or importer considered sale**

**(a) General rule**

If any person manufactures, produces, or imports an article (other than a tire taxable under section 4071) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words "(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)" shall be disregarded.

**(b) Tires**

If any person manufactures, produces, or imports a tire taxable under section 4071, and sells it on or in connection with the sale of any article, or uses it, then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

**(c) Computation of tax**

Except as provided in section 4223(b), in any case in which a person is made liable for tax by the preceding provisions of this section, the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as determined by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, § 1(a), (b), 69 Stat. 689; Pub. L. 85-859, title I, § 118, Sept. 2, 1958, 72 Stat. 1281; Pub. L. 86-418, § 2(a), Apr. 8, 1960, 74 Stat. 38; Pub. L. 87-61, title II, § 205(b), June 29, 1961, 75 Stat. 126; Pub. L. 89-44, title II, § 208(c), June 21, 1965, 79 Stat. 141; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-227, § 2(b)(1), Feb. 10, 1978, 92 Stat. 11; Pub. L. 98-369, div. A, title VII, § 735(c)(7), July 18, 1984, 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 735(c)(7)(D), substituted "(other than a tire taxable under section 4071)" for "(other than an article specified in subsection (b), (c), or (d))".

Subsec. (b). Pub. L. 98-369, § 735(c)(7)(A), (B), struck out "and tubes" after "Tires" in heading, and in text substituted "If" for "Except as provided in subsection (d), if", and struck out "or inner tube" before "taxable under section 4071".

Subsec. (c). Pub. L. 98-369, § 735(c)(7)(C), redesignated subsec. (e) as (c). Former subsec. (c), which related to automotive parts and accessories, was struck out.

Subsec. (d). Pub. L. 98-369, § 735(c)(7)(C), struck out subsec. (d) which related to bicycle tires and tubes.

Subsec. (e). Pub. L. 98-369, § 735(c)(7)(C), redesignated subsec. (e) as (c).

1978—Subsec. (a). Pub. L. 95-227 inserted provisions relating to applying first sentence of this subsection to coal taxable under section 4121 of this title.

1976—Subsec. (e). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

1965—Subsec. (b). Pub. L. 89-44, § 208(c)(1), (2), struck out references to automobile receiving sets from heading, and "or an automobile radio or television receiving set taxable under section 4141," before "and sells it".

Subsec. (c). Pub. L. 89-44, § 208(c)(3), (4), struck out reference to radio components and camera lenses from heading, and "a radio or television component taxable under section 4141, or a camera lens taxable under section 4171," before "and uses it".

1961—Subsec. (a). Pub. L. 87-61 inserted sentence making subsection inapplicable in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

1960—Subsec. (a). Pub. L. 86-418, § 2(a)(1), substituted "subsection (b), (c), or (d)" for "subsection (b) or (c)".

Subsec. (b). Pub. L. 86-418, § 2(a)(2), substituted "Except as provided in subsection (d), if any" for "If any."

Subsecs. (d), (e). Pub. L. 86-418, § 2(a)(3), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Pub. L. 85-859 amended section generally, striking out provisions which related to refrigerator components and to sales free of tax by virtue of section 4220 or 4224 of this title, and substituting provisions making manufacturers, producers and importers of parts or accessories taxable under section 4061(b), radio or television components taxable under section 4141, or camera lenses taxable under section 4171 liable for the tax if they use the parts or accessories otherwise than as material in the manufacture or production of, or as component parts of, any other article to be manufactured or produced by them, for provisions which made section inapplicable with respect to such parts if they were used by them as material in the manufacture or production of, or as a component part of, any article.

1955—Subsec. (a)(1). Act Aug. 11, 1955, § 1(a), inserted as tax exempt articles under this chapter, automobile parts or accessories, refrigerator, radio, or television components, or camera lenses taxable under section 4061(b), 4111, or 4171, respectively, of this title.

Subsec. (b). Act Aug. 11, 1955, § 1(b), excepted from application of section automobile parts or accessories, refrigerator, radio, or television components, and camera lenses, taxable under sections 4061(b), 4111, 4141, and

4171, respectively, of this title, when for use by the purchaser in the manufacture or production of, or as a component part of, any article.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note under section 4121 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4161 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-61 applicable only in the case of gasoline used on or after October 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86-418, set out as a note under section 4221 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

#### EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 11, 1955, effective on first day of first month which begins more than ten days after Aug. 11, 1955, see section 3 of act Aug. 11, 1955, set out as a note under section 6416 of this title.

### § 4219. Application of tax in case of sales by other than manufacturer or importer

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 494.)

### [§§ 4220 to 4225. Repealed. Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282]

Section 4220, acts Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, §1(c), 69 Stat. 689, related to exemption for sales or resales to manufacturers. See section 4221 et seq. of this title.

For sections 4221 to 4225, see Prior Provisions notes set out under sections 4221 to 4225 of this title.

#### EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

### Subchapter G—Exemptions, Registration, Etc.

Sec.	
4221.	Certain tax-free sales.
4222.	Registration.
4223.	Special rules relating to further manufacture.
[4224.	Repealed.]
4225.	Exemption of articles manufactured or produced by Indians.
[4226.	Repealed.]
4227.	Cross reference.

#### AMENDMENTS

1986—Pub. L. 99-514, title XVIII, §1899A(74), Oct. 22, 1986, 100 Stat. 2963, substituted “reference” for “references” in item 4227.

1983—Pub. L. 97-473, title II, §202(b)(9), Jan. 14, 1983, 96 Stat. 2610, purported to substitute “Cross references” for “Cross reference” in item 4227. No change in text was required because item 4227 as originally enacted by section 119(a) of Pub. L. 85-859 already read “Cross references”.

1976—Pub. L. 94-455, title XIX, §1904(b)(3), Oct. 4, 1976, 90 Stat. 1815, struck out item 4226 “Floor stocks taxes”.

1965—Pub. L. 89-44, title I, §101(b)(5), June 21, 1965, 79 Stat. 136, struck out item 4224 “Exemption for articles taxable as jewelry.”

1958—Pub. L. 85-859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1282, added subchapter heading and section analysis.

### § 4221. Certain tax-free sales

#### (a) General rule

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter C of chapter 31 on the first retail sale) of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government,

(5) to a nonprofit educational organization for its exclusive use, or

(6) to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization’s exclusive use in the collection, storage, or transportation of blood,

but only if such exportation or use is to occur before any other use. Paragraphs (4), (5), and (6) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051,<sup>1</sup> or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2022. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of

<sup>1</sup> So in original. The comma probably should not appear.

taxes imposed by subchapter C or D, paragraph (6) shall not apply. In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.

**(b) Proof of resale for further manufacture; proof of export**

Where an article has been sold free of tax under subsection (a)—

(1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or

(2) for export, or for resale by the purchaser to a second purchaser for export,

subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has been exported or resold for use in further manufacture.

**(c) Manufacturer relieved from liability in certain cases**

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4053(6), if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

**(d) Definitions**

For purposes of this section—

**(1) Manufacturer**

The term “manufacturer” includes a producer or importer of an article, and, in the case of taxes imposed by subchapter C of chapter 31, includes the retailer with respect to the first retail sale.

**(2) Export**

The term “export” includes shipment to a possession of the United States; and the term “exported” includes shipped to a possession of the United States.

**(3) Supplies for vessels or aircraft**

The term “supplies for vessels or aircraft” means fuel supplies, ships’ stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term “vessels” includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term “vessels of war of the United States or of any foreign nation” includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

**(4) State or local government**

The term “State or local government” means any State, any political subdivision thereof, or the District of Columbia.

**(5) Nonprofit educational organization**

The term “nonprofit educational organization” means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

**(6) Use in further manufacture**

An article shall be treated as sold for use in further manufacture if—

(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

**(7) Qualified bus**

**(A) In general**

The term “qualified bus” means—

- (i) an intercity or local bus, and
- (ii) a school bus.

**(B) Intercity or local bus**

The term “intercity or local bus” means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

- (i) such transportation is scheduled and along regular routes, or
- (ii) the seating capacity of such bus is at least 20 adults (not including the driver).

**(C) School bus**

The term “school bus” means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term “school” means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

**(e) Special rules**

**(1) Reciprocity required in case of civil aircraft**

In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in re-

spect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

## (2) Tires

### (A) Tax-free sales

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if—

(i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

### (B) Proof

Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-month period which begins on the date of the sale by him (or, if earlier, on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

### (C) Subsection (a)(1) does not apply

Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

## (3) Tires used on intercity, local, and school buses

Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

(Added Pub. L. 85-859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1282; amended Pub. L. 86-70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86-344, §2(b), Sept. 21, 1959, 73 Stat. 617; Pub. L. 86-418, §1, Apr. 8, 1960, 74 Stat. 38; Pub. L. 86-624, §18(e), July 12, 1960, 74 Stat. 416; Pub. L. 87-61, title II, §205(a), June 29, 1961, 75 Stat. 126; Pub. L. 89-44, title II, §208(d), title VIII, §801(c), (d)(1), June 21, 1965, 79 Stat. 141, 158; Pub. L. 91-172, title I, §101(j)(26), Dec. 30, 1969, 83 Stat. 529; Pub. L. 92-178, title IV,

§401(a)(3)(A), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-227, §2(b)(2), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95-600, title VII, §701(ff)(2)(A), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 95-618, title II, §§201(c)(1), 232(a), 233(c)(1), (2), Nov. 9, 1978, 92 Stat. 3183, 3189, 3191, 3192; Pub. L. 96-222, title I, §108(c)(5), Apr. 1, 1980, 94 Stat. 227; Pub. L. 97-424, title V, §§515(b)(1), 516(b)(2), Jan. 6, 1983, 96 Stat. 2181, 2183; Pub. L. 98-369, div. A, title VII, §735(c)(8), July 18, 1984, 98 Stat. 983; Pub. L. 99-499, title V, §521(d)(4), Oct. 17, 1986, 100 Stat. 1779; Pub. L. 99-514, title XVII, §1703(c)(2)(C), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100-17, title V, §502(b)(4), Apr. 2, 1987, 101 Stat. 257; Pub. L. 100-203, title IX, §9201(b)(1), title X, §10502(d)(4), Dec. 22, 1987, 101 Stat. 1330-330, 1330-444; Pub. L. 101-239, title VII, §7841(d)(17), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101-508, title XI, §§11211(d)(3), 11221(b), (d)(1), (2), Nov. 5, 1990, 104 Stat. 1388-427, 1388-444; Pub. L. 102-240, title VIII, §8002(b)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103-66, title XIII, §13161(b)(1), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105-178, title IX, §9002(b)(1), June 9, 1998, 112 Stat. 500; Pub. L. 105-206, title VI, §6023(17), July 22, 1998, 112 Stat. 825; Pub. L. 108-357, title VIII, §853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613; Pub. L. 109-59, title XI, §11101(b)(1), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 109-280, title XII, §1207(b)(1)-(3)(A), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 111-152, title I, §1405(b)(1), Mar. 30, 2010, 124 Stat. 1065; Pub. L. 112-30, title I, §142(d), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112-102, title IV, §402(d), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112-140, title IV, §402(c), June 29, 2012, 126 Stat. 403; Pub. L. 112-141, div. D, title I, §40102(d)(1), July 6, 2012, 126 Stat. 845; Pub. L. 113-295, div. A, title II, §221(a)(103)(B)(i), Dec. 19, 2014, 128 Stat. 4052; Pub. L. 114-94, div. C, title XXXI, §31102(d)(1), Dec. 4, 2015, 129 Stat. 1727.)

## CODIFICATION

Section 1207(b)(1)-(3)(A) of Pub. L. 109-280, which directed the amendment of section 4221 without specifying the act to be amended, was executed to this section, which is section 4221 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

## PRIOR PROVISIONS

A prior section 4221, act Aug. 16, 1954, ch. 736, 68A Stat. 495, related to exemption for articles taxable as jewelry, prior to repeal by Pub. L. 85-859, §119(a).

## AMENDMENTS

2015—Subsec. (a). Pub. L. 114-94 substituted “October 1, 2022” for “October 1, 2016” in concluding provisions.

2014—Subsec. (a). Pub. L. 113-295, §221(a)(103)(B)(i)(II), struck out “In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply.” after “regulations prescribe.” in concluding provisions.

Pub. L. 113-295, §221(a)(103)(B)(i)(I), substituted “subchapter” for “subchapter A or” in introductory provisions.

Subsec. (c). Pub. L. 113-295, §221(a)(103)(B)(i)(III), struck out “4001(c), 4001(d), or” after “tax under section”.

Subsec. (d)(1). Pub. L. 113-295, §221(a)(103)(B)(i)(I), substituted “subchapter” for “subchapter A or”.

2012—Subsec. (a). Pub. L. 112-141 substituted “October 1, 2016” for “July 1, 2012” in concluding provisions.

Pub. L. 112-140, §§1(c), 402(c), temporarily substituted “July 7, 2012” for “July 1, 2012” in concluding provisions.

sions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112-102 substituted “July 1, 2012” for “April 1, 2012” in concluding provisions.

2011—Subsec. (a). Pub. L. 112-30 substituted “April 1, 2012” for “October 1, 2011” in concluding provisions.

2010—Subsec. (a). Pub. L. 111-152 inserted at end of concluding provisions “In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.”

2006—Subsec. (a). Pub. L. 109-280, § 1207(b)(2), (3)(A), in concluding provisions, substituted “Paragraphs (4), (5), and (6)” for “Paragraphs (4) and (5)” and inserted at end “In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply.” See Codification note above.

Subsec. (a)(6). Pub. L. 109-280, § 1207(b)(1), added par. (6). See Codification note above.

2005—Subsec. (a). Pub. L. 109-59 substituted “2011” for “2005” in concluding provisions.

2004—Subsec. (a). Pub. L. 108-357 substituted “or 4081” for “, 4081, or 4091” in introductory provisions.

1998—Subsec. (a). Pub. L. 105-178 substituted “2005” for “1999” in concluding provisions.

Subsec. (c). Pub. L. 105-206 substituted “4053(6)” for “4053(a)(6)”.

1993—Subsec. (c). Pub. L. 103-66 substituted “4001(d)” for “4002(b), 4003(c), 4004(a)”.

1991—Subsec. (a). Pub. L. 102-240 substituted “1999” for “1995” in concluding provisions.

1990—Subsec. (a). Pub. L. 101-508, § 11221(b), substituted “subchapter A or C of chapter 31” for “section 4051” in introductory provisions and inserted at end “In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply.”

Pub. L. 101-508, § 11211(d)(3), substituted “1995” for “1993” in concluding provisions.

Subsec. (c). Pub. L. 101-508, § 11221(d)(1), substituted “section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)” for “section 4053(a)(6)”.

Subsec. (d)(1). Pub. L. 101-508, § 11221(d)(2), substituted “taxes imposed by subchapter A or C of chapter 31” for “the tax imposed by section 4051”.

1989—Subsec. (c). Pub. L. 101-239 struck out “or 4083” after “4053(a)(6)”.

1987—Subsec. (a). Pub. L. 100-203, § 10502(d)(4), substituted “(other than under section 4121, 4081, or 4091) on the sale by the manufacturer” for “(other than under section 4121 or section 4081 (at the Highway Trust Fund financing rate)) on the sale by the manufacturer” in introductory text.

Pub. L. 100-203, § 9201(b)(1), inserted at end “In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe.”

Pub. L. 100-17 substituted “1993” for “1988”.

1986—Subsec. (a). Pub. L. 99-514, as amended by Pub. L. 99-499, § 521(d)(4)(B), in introductory text, inserted “or section 4081 (at the Highway Trust Fund financing rate)” after “section 4121” as the probable intent of Congress, notwithstanding directory language that the insertion be made before “section 4121”, and substituted “or 4071” for “4071, or 4081 (at the Highway Trust Fund financing rate)” in last sentence.

Pub. L. 99-499, § 521(d)(4)(A), inserted “(at the Highway Trust Fund financing rate)” after “4081” in last sentence.

1984—Subsec. (a). Pub. L. 98-369, § 735(c)(8)(A), inserted “(or under section 4051 on the first retail sale)”.

Subsec. (c). Pub. L. 98-369, § 735(c)(8)(B), substituted “section 4053(a)(6)” for “section 4063(a)(6) or (7), 4063(b), 4063(e)”.

Subsec. (d)(1). Pub. L. 98-369, § 735(c)(8)(C), inserted “, and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale”.

Subsec. (d)(6). Pub. L. 98-369, § 735(c)(8)(D)(i), struck out provision at end that for purposes of subparagraph

(B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (d)(6)(A). Pub. L. 98-369, § 735(c)(8)(D)(ii), (iv), struck out “(other than an article referred to in subparagraph (B))” after “such article”, and inserted “or” at end.

Subsec. (d)(6)(B), (C). Pub. L. 98-369, § 735(c)(8)(D)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to parts or accessories taxable under former section 4061(b) of this title.

Subsec. (e)(2). Pub. L. 98-369, § 735(c)(8)(E), (F), struck out “and tubes” from heading, and in text struck out “or inner tube” and “or tube”, as the case may be, after “tire” wherever appearing.

Subsec. (e)(3) to (6). Pub. L. 98-369, § 735(c)(8)(G), added par. (3), struck out par. (4) which related to bicycle tires or tubes sold to bicycle manufacturers in general, the definition of a bicycle tire, and proof, struck out par. (5) which related to tires, tubes and tread rubber used on intercity, local, and school buses, and struck out par. (6) which related to bus parts and accessories.

1983—Subsec. (a). Pub. L. 97-424, § 516(b)(2), inserted provision that, in the case of taxes imposed by section 4051, 4071, or 4081, pars. (4) and (5) shall not apply on and after Oct. 1, 1988.

Subsec. (c). Pub. L. 97-424, § 515(b)(1), substituted “or 4083” for “4083, or 4093” after “4063(e)”.

1980—Subsec. (e)(6). Pub. L. 96-222 inserted provisions respecting selling by a purchaser or a second purchaser.

1978—Subsec. (a). Pub. L. 95-618, § 201(c)(1), inserted provision that paragraphs (4) and (5) not apply to the tax imposed by section 4064.

Pub. L. 95-227 inserted “(other than under section 4121)” after “this chapter”.

Subsec. (c). Pub. L. 95-600 substituted “4063(b), 4063(e)” for “4063(b)”.

Subsec. (d)(7). Pub. L. 95-618, § 233(c)(2), added par. (7).

Subsec. (e)(5). Pub. L. 95-618, § 233(c)(1), substituted provisions relating to the applicability of the taxes imposed by section 4071(a)(1) and (3) in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus and the tax imposed by section 4071(a)(4) in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to be used by the purchaser on or in connection with a qualified bus for provisions relating to the applicability of the tax imposed by section 4061(a) to a bus sold to any person for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations.

Subsec. (e)(6). Pub. L. 95-618, § 232(a), added par. (6).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1971—Subsec. (c). Pub. L. 92-178 inserted reference to section 4063(a)(6) or (7).

1969—Subsec. (d)(5). Pub. L. 91-172 substituted “section 170(b)(1)(A)(ii)” for “section 503(b)(2)”.

1965—Subsec. (d)(6)(B). Pub. L. 89-44, § 208(d)(1), struck out “a radio or television component taxable under section 4141, or a camera lens taxable under section 4171”.

Subsec. (d)(6). Pub. L. 89-44, § 801(c), inserted sentence providing that for purpose of subpar. (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (e)(2). Pub. L. 89-44, § 208(d)(2)-(5), struck out reference to automobile receiving sets from catchline and wherever appearing in subpars. (A) to (C), and reference to tax imposed under section 4141 of this title from subpars. (A) and (C).

Subsec. (e)(3). Pub. L. 89-44, § 208(d)(6), struck out par. (3) which related to musical instruments sold for religious use.

Subsec. (e)(5). Pub. L. 89-44, § 801(d)(1), added par. (5).

Subsec. (f). Pub. L. 89-44, § 208(d)(7), struck out subsec. (f) which related to sales of mechanical pencils and pens for export.



1961—Subsec. (d)(6)(C). Pub. L. 87-61 added subpar. (C).  
 1960—Subsec. (d)(4). Pub. L. 86-624 substituted “any State, any political subdivision thereof, or the District of Columbia” for “any State, Hawaii, the District of Columbia, or any political subdivision of any of the foregoing”.

Subsec. (e)(4). Pub. L. 86-418 added par. (4).

1959—Subsec. (d)(4). Pub. L. 86-70 struck out “Alaska,” before “Hawaii”.

Subsec. (d)(5). Pub. L. 86-344 included in definition of “nonprofit educational organization” a school operated as an activity of certain organizations exempt from the income tax and having a regular situs, faculty, curriculum and student body.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112-140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112-140, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-152 applicable to sales after Dec. 31, 2012, see section 1405(c) of Pub. L. 111-152, set out as an Effective Date note under section 4191 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109-280, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108-357, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13161(c), Aug. 10, 1993, 107 Stat. 453, provided that: “The amendments made by this section [amending this section and sections 4001 to 4003 and 4222 of this title and omitting sections 4004, 4006, 4007, 4011, and 4012 of this title] shall take effect on January 1, 1993, except that the provisions of section 4001(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall take effect on the date of the enactment of this Act [Aug. 10, 1993].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11221(f), Nov. 5, 1990, 104 Stat. 1388-444, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting subchapter A of chapter 31 of this title, redesignating former subchapters A and B of chapter 31 as subchapters B and C, respectively, and amending this section and sections 4222 and 4293 of this title] shall take effect on January 1, 1991.

“(2) EXCEPTION FOR BINDING CONTRACTS.—In determining whether any tax imposed by subchapter A of chapter 31 of the Internal Revenue Code of 1986, as added by this section, applies to any sale after December 31, 1990, there shall not be taken into account the amount paid for any article (or any part or accessory thereof) if the purchaser held on September 30, 1990, a contract (which was binding on such date and at all times thereafter before the purchase) for the purchase of such article (or such part or accessory).”

#### EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100-647, title I, §1017(c)(5), Nov. 10, 1988, 102 Stat. 3576, provided that: “The amendment made by section 10502(d)(4) of the Revenue Act of 1987 [Pub. L. 100-203, amending this section] shall be treated as if included in the amendments made by section 1703 of the Reform Act [Pub. L. 99-514] except that the reference to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988.”

Amendment by section 9201(b)(1) of Pub. L. 100-203 effective Jan. 1, 1988, see section 9201(d) of Pub. L. 100-203, set out as an Effective Date note under section 4131 of this title.

Amendment by section 10502(d)(4) of Pub. L. 100-203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100-203, set out as a note under section 40 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514, set out as a note under section 4081 of this title.

Amendment by Pub. L. 99-499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99-499, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 515(b)(1) of Pub. L. 97-424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective as if included in the provision of the Energy Tax Act of 1978, Pub. L. 95-618, to which such amendment relates, see section 108(c)(7) of Pub. L. 96-222, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 201(c)(1) of Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Pub. L. 95-618, title II, §232(c), Nov. 9, 1978, 92 Stat. 3190, provided that: “The amendments made by this section [amending this section and section 6416 of this title] shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act [Nov. 9, 1978].”

Amendment by section 233(c)(1), (2) of Pub. L. 95-618 effective on first day of first calendar month which be-

gins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as a note under section 34 of this title.

Pub. L. 95-600, title VII, §701(ff)(3), Nov. 6, 1978, 92 Stat. 2925, provided that: “The amendments made by this subsection [amending this section and sections 4061 and 4222 of this title] shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act [Nov. 6, 1978].”

Amendment by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note section 4121 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92-178, set out as a note under section 4071 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(d) of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4161 of this title.

Amendment by section 801(c), (d)(1) of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, see section 801(e) of Pub. L. 89-44, set out as a note under section 4261 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-61 applicable only in the case of gasoline sold on or after Oct. 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86-624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 3121 of this title.

Pub. L. 86-418, §4, Apr. 8, 1960, 74 Stat. 39, provided that: “The amendments made by this Act [amending this section and sections 4218, 4223, and 6416 of this title] shall apply only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [Apr. 8, 1960].”

#### EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86-344 effective Jan. 1, 1959, see section 2(e) of Pub. L. 86-344, Sept. 21, 1959, 73 Stat. 618.

Amendment by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE

Section effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

## § 4222. Registration

### (a) General rule

Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article unless the manufacturer, the first purchaser, and the second purchaser (if any) are

all registered under this section. Registration under this section shall be made at such time, in such manner and form, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

### (b) Exceptions

#### (1) Purchases by State and local governments

Subsection (a) shall not apply to any State or local government in connection with the purchase by it of any article if such State or local government complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

#### (2) Under regulations

Subject to such regulations as the Secretary may prescribe for the purpose of this paragraph, the Secretary may relieve the purchaser or the second purchaser, or both, from the requirement of registering under this section.

#### (3) Certain purchases and sales by the United States

Subsection (a) shall apply to purchases and sales by the United States only to the extent provided by regulations prescribed by the Secretary.

#### [(4) Repealed. Pub. L. 89-44, title II, §208(e), June 21, 1965, 79 Stat. 141]

#### (5) Supplies for vessels or aircraft

Subsection (a) shall not apply to a sale of an article for use by the purchaser as supplies for any vessel or aircraft if such purchaser complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

### (c) Denial, revocation, or suspension of registration

Under regulations prescribed by the Secretary, the registration of any person under this section may be denied, revoked, or suspended if the Secretary determines—

(1) that such person has used such registration to avoid the payment of any tax imposed by this chapter, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that such denial, revocation, or suspension is necessary to protect the revenue.

The denial, revocation, or suspension under this subsection shall be in addition to any penalty provided by law for any act or failure to act.

### (d) Registration in the case of certain other exemptions

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4053(6), 4064(b)(1)(C), 4101, and 4182(b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

**(e) Definitions**

Terms used in this section which are defined in section 4221(d) shall have the meaning given to them by section 4221(d).

(Added Pub. L. 85-859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1284; amended Pub. L. 89-44, title II, §208(e), title VIII, §802(c), June 21, 1965, 79 Stat. 141, 159; Pub. L. 92-178, title IV, §401(a)(3)(B), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title VII, §701(ff)(2)(B), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 95-618, title II, §§201(e), 231(f)(2), Nov. 9, 1978, 92 Stat. 3184, 3189; Pub. L. 97-424, title V, §515(b)(2), Jan. 6, 1983, 96 Stat. 2181; Pub. L. 98-369, div. A, title VII, §735(c)(9), July 18, 1984, 98 Stat. 983; Pub. L. 100-647, title I, §1017(c)(16), Nov. 10, 1988, 102 Stat. 3577; Pub. L. 101-508, title XI, §§1121(b)(2), 11221(d)(3), Nov. 5, 1990, 104 Stat. 1388-431, 1388-444; Pub. L. 103-66, title XIII, §13161(b)(2), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105-34, title XIV, §1431(a), Aug. 5, 1997, 111 Stat. 1050; Pub. L. 105-206, title VI, §6023(17), July 22, 1998, 112 Stat. 825; Pub. L. 113-295, div. A, title II, §221(a)(103)(B)(ii), Dec. 19, 2014, 128 Stat. 4053.)

**PRIOR PROVISIONS**

A prior section 4222, act Aug. 16, 1954, ch. 736, 68 Stat. 495, related to exemption from tax of certain supplies for vessels and airplanes, prior to repeal by Pub. L. 85-859, §119(a). See section 4221 of this title.

**AMENDMENTS**

2014—Subsec. (d). Pub. L. 113-295 struck out “4001(c), 4001(d),” after “provided by sections”.

1998—Subsec. (d). Pub. L. 105-206 substituted “4053(6)” for “4053(a)(6)”.

1997—Subsec. (b)(2). Pub. L. 105-34 substituted “Under regulations” for “Export” in heading and struck out “in the case of any sale or resale for export,” after “this paragraph,” in text.

1993—Subsec. (d). Pub. L. 103-66 substituted “4001(d)” for “4002(b), 4003(c), 4004(a)”.

1990—Subsec. (c). Pub. L. 101-508, §11212(b)(2), substituted “Denial, revocation, or suspension” for “Revocation or suspension” in heading, “denied, revoked, or suspended” for “revoked or suspended” in introductory provisions, and “denial, revocation, or suspension” for “revocation or suspension” in par. (2) and concluding provisions.

Subsec. (d). Pub. L. 101-508, §11221(d)(3), substituted “sections 4001(c), 4002(b), 4003(c), 4004(a), 4053(a)(6)” for “sections 4053(a)(6)”.

1988—Subsec. (d). Pub. L. 100-647 substituted “4101” for “4083”.

1984—Subsec. (d). Pub. L. 98-369 substituted “4053(a)(6)” for “4063(a)(7), 4063(b), 4063(e)”.

1983—Subsec. (d). Pub. L. 97-424 struck out “4093,” after “4083.”

1978—Subsec. (d). Pub. L. 95-618 substituted “4063(a)(7), 4063(b), 4064(b)(1)(C),” for “4063(a)(6) and (7), 4063(b),”.

Pub. L. 95-600 substituted “4063(b), 4063(e),” for “4063(b),”.

1976—Subsecs. (a) to (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1971—Subsec. (d). Pub. L. 92-178 inserted reference to section 4063(a)(6) and (7).

1965—Subsec. (b)(4). Pub. L. 89-44, §208(e), struck out par. (4) which related to mechanical pencils, fountain pens, and ball point pens.

Subsec. (b)(5). Pub. L. 89-44, §802(c), added par. (5).

**EFFECTIVE DATE OF 2014 AMENDMENT**

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-34, title XIV, §1431(b), Aug. 5, 1997, 111 Stat. 1050, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

**EFFECTIVE DATE OF 1993 AMENDMENT**

Amendment by Pub. L. 103-66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103-66, set out as a note under section 4221 of this title.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by section 11212(b)(2) of Pub. L. 101-508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101-508, set out as a note under section 4081 of this title.

Amendment by section 11221(d)(3) of Pub. L. 101-508 effective Jan. 1, 1991, with exception for contract binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101-508, set out as a note under section 4221 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 97-424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

**EFFECTIVE DATE OF 1978 AMENDMENTS**

Amendment by section 201(e) of Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Pub. L. 95-618, title II, §231(g), Nov. 9, 1978, 92 Stat. 3189, provided that:

“(1) The amendments made by subsections (a) and (f) [amending this section and sections 4063 and 6412 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Nov. 9, 1978].

“(2) For purposes of paragraph (1), an article shall not be considered sold on or before the date of the enactment of this Act [Nov. 9, 1978] unless possession or right to possession passes to the purchaser on or before such date.

“(3) In the case of—

“(A) a lease,

“(B) a contract for the sale of an article providing that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

“(C) a conditional sale, or

“(D) a chattel mortgage arrangement providing that the sale price shall be paid in installments, entered into on or before the date of the enactment of this Act [Nov. 9, 1978], payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be

treated as payments made in respect of an article sold on or before the date of the enactment of this Act.”

Amendment by Pub. L. 95-600 effective on first day of first calendar month beginning more than 20 days after Nov. 6, 1978, see section 701(ff)(3) of Pub. L. 95-600, set out as a note under section 4221 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92-178, set out as a note under section 4071 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(e) of Pub. L. 89-44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89-44, set out as a note under section 4161 of this title.

Amendment by section 802(c) of Pub. L. 89-44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89-44, set out as a note under section 4082 of this title.

### § 4223. Special rules relating to further manufacture

#### (a) Purchasing manufacturer to be treated as the manufacturer

For purposes of this chapter, a manufacturer or producer to whom an article is sold or resold free of tax under section 4221(a)(1) for use by him in further manufacture shall be treated as the manufacturer or producer of such article.

#### (b) Computation of tax

If the manufacturer or producer referred to in subsection (a) incurs liability for tax under this chapter on his sale or use of an article referred to in subsection (a) and the tax is based on the price for which the article is sold, the article shall be treated as having been sold by him—

(1) at the price for which the article was sold by him (or, where the tax is on his use of the article, at the price referred to in section 4218(c)); or

(2) if he so elects and establishes such price to the satisfaction of the Secretary—

(A) at the price for which the article was sold to him; or

(B) at the price for which the article was sold by the person who (without regard to subsection (a)) is the manufacturer, producer, or importer of such article.

For purposes of this subsection, the price for which the article was sold shall be determined as provided in section 4216. For purposes of paragraph (2) no adjustment or readjustment shall be made in such price by reason of any discount, rebate, allowance, return or repossession of a container or covering, or otherwise. An election under paragraph (2) shall be made in the return reporting the tax applicable to the sale or use of the article, and may not be revoked.

(Added Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1285; amended Pub. L. 86-418, § 2(b), Apr. 8, 1960, 74 Stat. 38; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title VII, § 735(c)(10), July 18, 1984, 98 Stat. 983.)

#### PRIOR PROVISIONS

A prior section 4223, act Aug. 16, 1954, ch. 736, 68A Stat. 495, related to exemption of articles manufac-

tured or produced by Indians, prior to repeal by Pub. L. 85-859, § 119(a). See section 4225 of this title.

#### AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369 substituted “4218(c)” for “section 4218(e)”.

1976—Subsec. (b) Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1960—Subsec. (b)(1). Pub. L. 86-418 substituted “section 4218(e)” for “section 4218(d)”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86-418, set out as a note under section 4221 of this title.

### [§ 4224. Repealed. Pub. L. 89-44, title I, § 101(b)(5), June 21, 1965, 79 Stat. 136]

Section, Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1286, exempted, with specified exemptions, articles taxable under section 4001 from the imposition of the manufacturers excise tax.

A prior section 4224, act Aug. 16, 1954, ch. 736, 68A Stat. 495, exempted articles for the exclusive use of any State, Territory, or political subdivision of either, or the District of Columbia, prior to repeal by Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1282.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

### § 4225. Exemption of articles manufactured or produced by Indians

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska.

(Added Pub. L. 85-859, title I, § 119(a), Sept. 2, 1958, 72 Stat. 1286.)

#### PRIOR PROVISIONS

A prior section 4225, act Aug. 16, 1954, ch. 736, 68A Stat. 496, related to exemption for exports, prior to repeal by Pub. L. 85-859, § 119(a). See section 4221 of this title.

#### ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### [§ 4226. Repealed. Pub. L. 94-455, title XIX, § 1904(a)(4), Oct. 4, 1976, 90 Stat. 1811]

Section, added June 29, 1956, ch. 462, title II, § 207(a), 70 Stat. 391; amended Sept. 21, 1959, Pub. L. 86-342, title

II, §201(c)(1)–(3), 73 Stat. 614; June 29, 1961, Pub. L. 87–61, title II, §206(a), (b), 75 Stat. 127; Aug. 1, 1966, Pub. L. 89–523, §2, 80 Stat. 331, related to floor stocks taxes for 1956 on tires of the type used on highway vehicles, on tread rubber, on gasoline, for 1959 on gasoline, for 1961 on certain tires and inner tubes and tread rubber, provisions relating to overpayment of floor stocks taxes, due date for taxes, taxes on certain tires and tubes, and definitions of “dealer” and “held by a dealer”.

A prior section 4226 of this title was renumbered section 4227.

#### § 4227. Cross reference

**For exception for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.**

(Aug. 16, 1954, ch. 736, 68A Stat. 496, §4226; renumbered §4227, June 29, 1956, ch. 462, title II, §207(a), 70 Stat. 391; amended Pub. L. 89–44, title II, §208(f), June 21, 1965, 79 Stat. 141; Pub. L. 94–455, title XIX, §1904(a)(5), Oct. 4, 1976, 90 Stat. 1811; Pub. L. 97–473, title II, §202(b)(8), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title VII, §735(c)(11), July 18, 1984, 98 Stat. 983; Pub. L. 99–514, title XVIII, §1899A(49), Oct. 22, 1986, 100 Stat. 2961.)

#### AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting “reference” for “references” in section catchline, struck out par. (1) designation, substituted “exception” for “exemption”, and struck out par. (2) relating to cross reference to credit for taxes on tires.

1984—Par. (2). Pub. L. 98–369 struck out “and tubes” after “on tires”.

1983—Pub. L. 97–473 designated existing provisions as par. (2) and added par. (1).

1976—Pub. L. 94–455 struck out pars. (1) and (3) relating to cross references to exemption from tax in case of certain sales to the United States and to administrative provisions of general applicability, respectively.

1965—Par. (2). Pub. L. 89–44 struck out “and automobile radio and television receiving sets,” after “tires and inner tubes,”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(5) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

## CHAPTER 33—FACILITIES AND SERVICES

Subchapter	Sec. <sup>1</sup>
[A. Repealed.]	
B. Communications .....	4251
C. Transportation by air .....	4261
[D. Repealed.]	
E. Special provisions applicable to services and facilities taxes .....	4291

#### REPEAL OF SUBCHAPTER B

*Table of subchapters for chapter 33 amended by striking out the item relating to subchapter B dealing with Communications, effective Jan. 1, 1982, see Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843. Repeal of item B was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.*

#### AMENDMENTS

1970—Pub. L. 91–258, title II, §205(c)(5), May 21, 1970, 84 Stat. 242, substituted “Transportation by air” for “Transportation of persons by air” in item for subchapter C.

1965—Pub. L. 89–44, title III, §§301, 304, June 21, 1965, 79 Stat. 145, 148, struck out items for subchapters A and D.

1962—Pub. L. 87–508, §5(c)(1), June 28, 1962, 76 Stat. 118, substituted “Transportation of persons by air” for “Transportation of persons” in item for subchapter C.

1958—Pub. L. 85–475, §4(b)(1), June 30, 1958, 72 Stat. 260, substituted “Transportation of persons” for “Transportation” in item for subchapter C.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(d), June 28, 1962, 76 Stat. 119, provided in part that: “The amendment made by subsection (c)(1) [amending item for subchapter C in the analysis] shall apply only with respect to transportation beginning after November 15, 1962.”

#### [Subchapter A—Repealed]

#### [§§ 4231 to 4234. Repealed. Pub. L. 89–44, title III, §301, June 21, 1965, 79 Stat. 145]

Section 4231, acts Aug. 16, 1954, ch. 736, 68A Stat. 497; Aug. 6, 1956, ch. 1019, §1, 70 Stat. 1074; Sept. 2, 1958, Pub. L. 85–859, title I, §131(a)–(c), 72 Stat. 1286, 1287; Apr. 8, 1960, Pub. L. 86–422, §1, 74 Stat. 41, imposed a tax on admissions, permanent use or lease of boxes or seats, sales outside of box office in excess of established price, sales by proprietors in excess of established price, and cabarets.

Section 4232, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Sept. 2, 1958, Pub. L. 85–859, title I, §131(d), 72 Stat. 1287, defined admission, roof garden, cabaret, or other similar place, and performance for profit as used in section 4231.

Section 4233, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Aug. 11, 1955, ch. 792, §1, 69 Stat. 675; Apr. 16, 1958, Pub. L. 85–380, §§1–3, 72 Stat. 88; Sept. 2, 1958, Pub. L. 85–859, title I, §131(e), (f), 72 Stat. 1287; June 25, 1959, Pub. L. 86–70, §22(a), 73 Stat. 146; Sept. 21, 1959, Pub. L. 86–319, §1, 73 Stat. 590; Sept. 21, 1959, Pub. L. 86–344, §2(c), 73 Stat. 617; July 12, 1960, Pub. L. 86–624, §18(d), 74 Stat. 416, granted certain exemptions to certain charitable,

<sup>1</sup> Section numbers editorially supplied.

educational, or religious entertainments, agricultural fairs, certain musical or dramatic performances, swimming pools, etc., home and garden tours, historic sites, certain amateur theatricals, certain amateur baseball games, rodeos, pageants, and certain benefit performances.

Section 4234, act Aug. 16, 1954, ch. 736, 68A Stat. 501, required that price of tickets be printed on face or back of such tickets and provided a penalty for selling tickets not so stamped.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to admissions, services, or uses after noon, December 31, 1965, see section 701(b)(1) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 4291 of this title.

### [[§§ 4241 to 4243. Repealed. Pub. L. 89-44, title III, § 301, June 21, 1965, 79 Stat. 145]

Section 4241, acts Aug. 16, 1954, ch. 736, 68A Stat. 501; Sept. 2, 1958, Pub. L. 85-859, title I, § 132(a), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86-344, § 3(b), 73 Stat. 618, imposed a tax on dues or membership fees, initiation, fees, and life memberships in social, athletic, or sporting clubs or organizations.

Section 4242, act Aug. 16, 1954, ch. 736, 68A Stat. 501, defined dues and initiation fees as used in section 4241.

Section 4243, acts Aug. 16, 1954, ch. 736, 68A Stat. 502; Sept. 2, 1958, Pub. L. 85-859, title I, § 132(b), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86-344, § 3(a), 73 Stat. 618, granted exemptions to fraternal organizations, payments for capital improvements, and nonprofit swimming or skating facilities.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to dues and membership fees attributable to periods beginning on or after January 1, 1966, initiation fees and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966, initiation fees paid on or after July 1, 1965, to a new club or organization first making its facilities available to members on or after such a date, and, in the case of amounts described in section 4243(b) of this title, 3-year periods beginning on or after January 1, 1966, see section 701(b)(1) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 4291 of this title.

### Subchapter B—Communications

Sec.	
4251.	Imposition of tax.
4252.	Definitions.
4253.	Exemptions.
4254.	Computation of tax.

#### REPEAL

*This subchapter, relating to the tax on communication, was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, Pub. L. 98-369, Pub. L. 99-514, Pub. L. 100-203, and Pub. L. 101-508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.*

### § 4251. Imposition of tax

#### (a) Tax imposed

##### (1) In general

There is hereby imposed on amounts paid for communications services a tax equal to the applicable percentage of amounts so paid.

##### (2) Payment of tax

The tax imposed by this section shall be paid by the person paying for such services.

#### (b) Definitions

For purposes of subsection (a)—

##### (1) Communications services

The term “communications services” means—

- (A) local telephone service;
- (B) toll telephone service; and
- (C) teletypewriter exchange service.

##### (2) Applicable percentage

The term “applicable percentage” means 3 percent.

#### (c) Special rule

For purposes of subsections (a) and (b), in the case of communications services rendered before November 1 of a calendar year for which a bill has not been rendered before the close of such year, a bill shall be treated as having been first rendered on December 31 of such year.

#### (d) Treatment of prepaid telephone cards

##### (1) In general

For purposes of this subchapter, in the case of communications services acquired by means of a prepaid telephone card—

(A) the face amount of such card shall be treated as the amount paid for such communications services, and

(B) that amount shall be treated as paid when the card is transferred by any telecommunications carrier to any person who is not such a carrier.

##### (2) Determination of face amount in absence of specified dollar amount

In the case of any prepaid telephone card which entitles the user other than to a specified dollar amount of use, the face amount shall be determined under regulations prescribed by the Secretary.

##### (3) Prepaid telephone card

For purposes of this subsection, the term “prepaid telephone card” means any card or any other similar arrangement which permits its holder to obtain communications services and pay for such services in advance.

(Aug. 16, 1954, ch. 736, 68A Stat. 503; Pub. L. 85-859, title I, § 133(a), Sept. 2, 1958, 72 Stat. 1289; Pub. L. 86-75, § 5, June 30, 1959, 73 Stat. 158; Pub. L. 86-564, title II, § 202(a)(2), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, § 3(a)(2), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, § 3(a)(2), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, § 3(a)(2), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, § 2(a)(2), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title III, § 302, title VII, § 701(b)(2)(B), June 21, 1965, 79 Stat. 145, 156; Pub. L. 89-368, title II, § 202(a), Mar. 15, 1966, 80 Stat. 66; Pub. L. 90-285, § 1(a)(3), Apr. 12, 1968, 82 Stat.

92; Pub. L. 90-364, title I, §105(b)(1), (2), June 28, 1968, 82 Stat. 265; Pub. L. 91-172, title VII, §702(b)(1), (2), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, §201(b)(1), (2), Dec. 31, 1970, 84 Stat. 1843; Pub. L. 96-499, title XI, §1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97-34, title VIII, §821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97-248, title II, §282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98-369, div. A, title I, §26, July 18, 1984, 98 Stat. 507; Pub. L. 99-514, title XVIII, §1801(b), Oct. 22, 1986, 100 Stat. 2785; Pub. L. 100-203, title X, §10501, Dec. 22, 1987, 101 Stat. 1330-438; Pub. L. 101-508, title XI, §11217(a), Nov. 5, 1990, 104 Stat. 1388-437; Pub. L. 105-34, title X, §1034(a), Aug. 5, 1997, 111 Stat. 937; Pub. L. 105-206, title VI, §6010(i), July 22, 1998, 112 Stat. 815.)

#### CODIFICATION

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90-364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981.

Pub. L. 96-499, title XI, §1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97-34, title VIII, §821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97-248, title II, §282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98-369, div. A, title I, §26, July 18, 1984, 98 Stat. 507; Pub. L. 99-514, title XVIII, §1801(b), Oct. 22, 1986, 100 Stat. 2785; Pub. L. 100-203, title X, §10501, Dec. 22, 1987, 101 Stat. 1330-438; Pub. L. 101-508, title XI, §11217(a), Nov. 5, 1990, 104 Stat. 1388-437, amended this section, relating to the imposition of the tax on communications, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date, without amending Pub. L. 90-364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, which, as amended, had repealed this subchapter, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982.

#### AMENDMENTS

1998—Subsec. (d)(3). Pub. L. 105-206 substituted “any other similar arrangement” for “other similar arrangement”.

1997—Subsec. (d). Pub. L. 105-34 added subsec. (d).

1990—Subsec. (b)(2). Pub. L. 101-508 substituted “percent.” for “percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero.”

1987—Subsec. (b)(2). Pub. L. 100-203 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘applicable percentage’ means—

<b>“With respect to amount paid pursuant to bills first rendered:</b>	<b>The percentage is:</b>
During 1983, 1984, 1985, 1986, or 1987 .....	3
During 1988 or thereafter .....	0.”

1986—Subsec. (b)(2). Pub. L. 99-514 inserted “1985,” after “1984,” in table.

1984—Subsec. (b)(2). Pub. L. 98-369 substituted “During 1983, 1984, 1986, or 1987” for “During 1983, 1984, or 1985” in item relating to an applicable percentage of 3 and substituted “During 1988 or thereafter” for “During 1986 or thereafter” in item relating to an applicable percentage of 0.

1982—Subsec. (a). Pub. L. 97-248 added subsec. (a) and struck out former subsec. (a) which provided that there was a tax on communication services specified as local telephone service, toll telephone service, and teletype-writer exchange service, directed that the tax was to be paid by the person paying for such services, and designated the tax as the percentage of the amount paid for the services as set out in the following table:

<b>“Amounts paid pursuant to bills first rendered—</b>	<b>Percent—</b>
Before January 1, 1973 .....	10
During 1973 .....	9
During 1974 .....	8
During 1975 .....	7
During 1976 .....	6
During 1977 .....	5
During 1978 .....	4
During 1979 .....	3
During 1980 or 1981 .....	2
During 1982, 1983, or 1984 .....	1”

Subsec. (b). Pub. L. 97-248 added subsec. (b) and struck out former subsec. (b) which provided that the tax imposed by former subsec. (a) would not apply to amounts paid pursuant to bills first rendered on or after January 1, 1985.

1981—Subsec. (a)(2). Pub. L. 97-34, §821(a), substituted “During 1982, 1983, or 1984” for “During 1982” in table.

Subsec. (b). Pub. L. 97-34, §821(b), extended termination date to Jan. 1, 1985, from Jan. 1, 1983.

1980—Subsec. (a)(2). Pub. L. 96-499, §1151(a), substituted “During 1980 or 1981” for “During 1980” and “During 1982” for “During 1981” in table.

Subsec. (b). Pub. L. 96-499, §1151(b), substituted “1983” for “1982”.

1970—Subsec. (a)(2). Pub. L. 91-614, §201(b)(1), substituted provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1973 is 10% of such amount, amounts paid pursuant to bills first rendered during 1973 is 9% of such amount, during 1974 is 8% of such amount, during 1975 is 7% of such amount, during 1976 is 6% of such amount, during 1977 is 5% of such amount, during 1978 is 4% of such amount, during 1979 is 3% of such amount, during 1980 is 2% of such amount, and during 1981 is 1% of such amount for provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1971 is 10% of such amount, amounts paid pursuant to bills first rendered during 1971 is 5% of such amount, during 1972 is 3% of such amount, and during 1973 is 1% of such amount.

Subsec. (b). Pub. L. 91-614, §201(b)(2), substituted “January 1, 1982” for “January 1, 1974”.

1969—Subsec. (a)(2). Pub. L. 91-172, §702(b)(1), increased rate of tax on amounts paid for communication services from 5 to 10 percent during 1970, from 3 to 5 percent during 1971, from 1 to 3 percent during 1972, and imposed a 1 percent tax on amounts paid for communication services during 1973.

Subsec. (b). Pub. L. 91-172, §702(b)(2), substituted “January 1, 1974” for “January 1, 1973”.

1968—Subsec. (a)(2). Pub. L. 90-364, §105(b)(1), extended from April 30, 1968, through the end of 1969 the period for the imposition of the 10 percent rate, thereby increasing the rate from 1 percent to 10 percent for the period May 1, 1968, through the end of 1968 and from 0 percent to 10 percent for 1969, and imposed a rate of 5 percent during 1970, a rate of 3 percent during 1971, and a rate of 1 percent during 1972.

Pub. L. 90-285 substituted “April 30, 1968” and “May 1, 1968” for “March 31, 1968” and “April 1, 1968” respectively.

Subsec. (b). Pub. L. 90-364, §105(b)(2), substituted “1973” for “1969”.

Subsec. (c). Pub. L. 90-364, §105(b)(2), extended provisions calling for treatment of bills not rendered before the end of a year for service rendered before November 1 of that year as having been first rendered on December 31 of that year so as to include years subsequent to 1968 and struck out special provision for the application of subsec. (a) in the case of communication services rendered before March 1, 1968, for which a bill was not rendered before May 1, 1968.

Pub. L. 90-285 substituted “March 1, 1968,” for “February 1, 1968,” “May 1, 1968” for “April 1, 1968,” “April 30, 1968” for “March 31, 1968,” and “February 29, 1968” for “January 31, 1968”.

1966—Subsec. (a)(2). Pub. L. 89-368, §202(a)(1), increased to 10 percent the schedule of rates for tax imposed for the period up to April 1, 1968, and authorized

a reduction to 1 percent for the period after March 31, 1968, and before January 1, 1969.

Subsec. (c). Pub. L. 89-368, § 202(a)(2), conformed subsection to rate reduction schedule alterations by providing that, in the case of communications services rendered before February 1, 1968, for which a bill has not been rendered before April 1, 1968, the bill shall be treated as having been first rendered on March 31, 1968, and, in the case of services rendered after January 31, 1968, and before November 1, 1968, for which a bill has not been rendered before January 1, 1969, the bill shall be treated as having first been rendered on December 31, 1968.

1965—Subsec. (a). Pub. L. 89-44, § 302, substituted local telephone service, toll telephone service, and teletypewriter exchange service, for general telephone service, toll telephone service, telegraph service, teletypewriter exchange service, wire mileage service, and wire and equipment service as the taxed services and reduced the rate of tax to 3 percent during 1966, 2 percent during 1967, and 1 percent during 1968.

Subsec. (b). Pub. L. 89-44, § 302, added subsec. (b). Pub. L. 89-44, § 701(b)(2)(B), repealed former subsec. (b), as in effect June 30, 1965, effective on and after July 1, 1965. Such repealed provision had called for termination of the tax on general telephone service as of July 1, 1965.

Subsec. (c). Pub. L. 89-44, § 302, added subsec. (c). 1964—Subsec. (b)(2). Pub. L. 88-348 substituted “July 1, 1965” for “July 1, 1964” in two places.

1963—Subsec. (b)(2). Pub. L. 88-52 substituted “July 1, 1964” for “July 1, 1963” in two places.

1962—Subsec. (b)(2). Pub. L. 87-508 substituted “July 1, 1963” for “July 1, 1962” in two places.

1961—Subsec. (b)(2). Pub. L. 87-72 substituted “July 1, 1962” for “July 1, 1961” in two places.

1960—Subsec. (b)(2). Pub. L. 86-564 substituted “July 1, 1961” for “July 1, 1960” in two places.

1959—Pub. L. 86-75 designated former provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85-859 redesignated “local telephone service” as “general telephone service”, “long distance telephone service” as “toll telephone service” and “leased wire, teletypewriter or talking circuit special service” as “teletypewriter exchange service” and “wire mileage service”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, § 1034(b), Aug. 5, 1997, 111 Stat. 937, provided that: “The amendments made by this section [amending this section] shall apply to amounts paid in calendar months beginning more than 60 days after the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, § 282(b), Sept. 3, 1982, 96 Stat. 568, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1982.”

#### EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90-364 effective Apr. 30, 1968, see section 105(c) of Pub. L. 90-364, set out as a note under section 6412 of this title.

Amendment by Pub. L. 90-285 effective Mar. 31, 1968, see section 1(b) of Pub. L. 90-285, set out as a note under section 6412 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-368, title II, § 202(c), Mar. 15, 1966, 80 Stat. 66, provided that: “The amendments made by subsections (a) [amending this section] and (b) [amending section 4253 of this title] shall apply to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965 [see Effective Date of 1965 Amendment note below], shall apply to the amounts paid for such services.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VII, § 701(b)(2)(A), June 21, 1965, 79 Stat. 156, provided that: “The amendments made by section 302 [amending this section and sections 4252, 4253, and 4254 of this title] (relating to communication services) shall apply to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after January 1, 1966, for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered shall apply to the amounts paid for such services.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-859, title I, § 133(b), Sept. 2, 1958, 72 Stat. 1292, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [amending this section and sections 4252 to 4254 of this title] shall apply with respect to amounts paid on or after the effective date prescribed in section 1(c) of this Act for services rendered on or after such date.

“(2) The amendment made by subsection (a) [amending this section and sections 4252 to 4254 of this title] shall not apply with respect to amounts paid pursuant to bills rendered before the effective date prescribed in section 1(c) of this Act. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in effect at the time such services were rendered shall apply to the amounts paid for such services.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.



**§ 4252. Definitions****(a) Local telephone service**

For purposes of this subchapter, the term “local telephone service” means—

(1) the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and

(2) any facility or service provided in connection with a service described in paragraph (1).

The term “local telephone service” does not include any service which is a “toll telephone service” or a “private communication service” as defined in subsections (b) and (d).

**(b) Toll telephone service**

For purposes of this subchapter, the term “toll telephone service” means—

(1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States, and

(2) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

**(c) Teletypewriter exchange service**

For purposes of this subchapter, the term “teletypewriter exchange service” means the access from a teletypewriter or other data station to the teletypewriter exchange system of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter or other data stations constituting a part of the same teletypewriter exchange system, to which the subscriber is entitled upon payment of a charge or charges (whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or in some other manner). The term “teletypewriter exchange service” does not include any service which is “local telephone service” as defined in subsection (a).

**(d) Private communication service**

For purposes of this subchapter, the term “private communication service” means—

(1) the communication service furnished to a subscriber which entitles the subscriber—

(A) to exclusive or priority use of any communication channel or groups of channels, or

(B) to the use of an intercommunication system for the subscriber’s stations,

regardless of whether such channel, groups of channels, or intercommunication system may

be connected through switching with a service described in subsection (a), (b), or (c),

(2) switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels or systems described in paragraph (1), and

(3) the channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system,

except that such term does not include any communication service unless a separate charge is made for such service.

(Aug. 16, 1954, ch. 736, 68A Stat. 503; Pub. L. 85-859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1290; Pub. L. 87-508, §4(a), June 28, 1962, 76 Stat. 115; Pub. L. 89-44, title III, §302, June 21, 1965, 79 Stat. 145.)

**CODIFICATION**

This subchapter, relating to the tax on communications was repealed by Pub. L. 90-364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, Pub. L. 98-369, Pub. L. 99-514, Pub. L. 100-203, and Pub. L. 101-508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

**AMENDMENTS**

1965—Subsec. (a). Pub. L. 89-44 substituted definition of “local telephone service” for definition of “general telephone service”.

Subsec. (b). Pub. L. 89-44 replaced definition of “toll telephone service” as telephone or radio telephone message or conversation for which there is a toll charge paid within the United States with a definition which defined the term as a telephonic quality communication carrying a varying toll charge depending upon distance and elapsed transmission time and a service entitling the subscriber, upon payment of a periodic charge, to unlimited telephonic communication in an area outside the local telephone system area.

Subsec. (c). Pub. L. 89-44 substituted definition of “teletypewriter exchange service” for definition of “telegraph service”.

Subsec. (d). Pub. L. 89-44 substituted definition of “private communication service” for definition of “teletypewriter exchange service”.

Subsecs. (e), (f). Pub. L. 89-44 struck out subsecs. (e) and (f) which defined wire mileage service and wire and equipment service.

1962—Subsec. (e)(1), (2). Pub. L. 87-508 limited wire mileage service to service not used in the conduct of a trade or business.

1958—Subsec. (a). Pub. L. 85-859 substituted definition of “general telephone service” for provisions which defined “local telephone service” as any telephone service not taxable as long distance telephone service; leased wire; teletypewriter or talking circuit special service; or wire and equipment service, and provided that amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service, and that amounts paid for services and facilities which are exempted from other communication taxes by section

4253(b) should not be deemed to be within the definition of local telephone service.

Subsec. (b). Pub. L. 85-859 substituted “toll telephone service” for “long distance telephone service” and struck out provisions which defined “long distance telephone service” as a telephone or radio telephone message or conversation for which the toll charge is more than 24 cents.

Subsec. (c). Pub. L. 85-859 substituted “For purposes of this subchapter, the term ‘telegraph service’ means a telegram” for “As used in section 4251 the term ‘telegraph service’ means a telegraph”.

Subsec. (d). Pub. L. 85-859 substituted provisions defining “teletypewriter exchange service” for provisions which defined “leased wire, teletypewriter or talking circuit special service”.

Subsec. (e). Pub. L. 85-859 substituted provisions defining “wire mileage service” for provisions which defined “wire and equipment service”, which were covered by subsec. (f) of this section.

Subsec. (f). Pub. L. 85-859 added subsec. (f). Similar provisions were formerly contained in subsec. (e) of this section.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89-44, set out as a note under section 4251 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-508, §4(c), June 28, 1962, 76 Stat. 115, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 4253 of this title] shall apply with respect to services furnished on or after January 1, 1963.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85-859, see section 133(b) of Pub. L. 85-859, set out as a note under section 4251 of this title.

### § 4253. Exemptions

#### (a) Certain coin-operated service

Service paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by section 4251 with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

#### (b) News services

No tax shall be imposed under section 4251, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

#### (c) International, etc., organizations

No tax shall be imposed under section 4251 on any payment received for services furnished to an international organization, or to the American National Red Cross.

#### (d) Servicemen in combat zone

No tax shall be imposed under section 4251 on any payment received for any toll telephone service which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.

#### (e) Items otherwise taxed

Only one payment of tax under section 4251 shall be required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing such service.

#### (f) Common carriers and communications companies

No tax shall be imposed under section 4251 on the amount paid for any toll telephone service described in section 4252(b)(2) to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

#### (g) Installation charges

No tax shall be imposed under section 4251 on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

#### (h) Nonprofit hospitals

No tax shall be imposed under section 4251 on any amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term “nonprofit hospital” means a hospital referred to in section 170(b)(1)(A)(iii) which is exempt from income tax under section 501(a).

#### (i) State and local governmental exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 upon any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

#### (j) Exemption for nonprofit educational organizations

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term “nonprofit educational organization” means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under

section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

**(k) Exemption for qualified blood collector organizations**

Under regulations provided by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a qualified blood collector organization (as defined in section 7701(a)(49)) for services or facilities furnished to such organization.

**(l) Filing of exemption certificates**

**(1) In general**

In order to claim an exemption under subsection (c), (h), (i), (j), or (k), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to such exemption.

**(2) Duration of certificate**

Any statement provided under paragraph (1) shall remain in effect until—

(A) the provider of communications services has actual knowledge that the information provided in such statement is false, or

(B) such provider is notified by the Secretary that the provider of the statement is no longer entitled to an exemption described in paragraph (1).

If any information provided in such statement is no longer accurate, the person providing such statement shall inform the provider of communications services within 30 days of any change of information.

(Aug. 16, 1954, ch. 736, 68A Stat. 504; Pub. L. 85-859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1290; Pub. L. 86-344, §4(a), Sept. 21, 1959, 73 Stat. 619; Pub. L. 87-508, §4(b), June 28, 1962, 76 Stat. 115; Pub. L. 89-44, title III, §302, June 21, 1965, 79 Stat. 146; Pub. L. 89-368, title II, §202(b), Mar. 15, 1966, 80 Stat. 66; Pub. L. 91-172, title I, §101(j)(27), Dec. 30, 1969, 83 Stat. 529; Pub. L. 94-455, title XIX, §§1904(a)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 101-508, title XI, §11217(c)(1), Nov. 5, 1990, 104 Stat. 1388-438; Pub. L. 109-280, title XII, §1207(c), Aug. 17, 2006, 120 Stat. 1070.)

**CODIFICATION**

Section 1207(c) of Pub. L. 109-280, which directed the amendment of section 4253 without specifying the act to be amended, was executed to this section, which is section 4253 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90-364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248,

Pub. L. 98-369, Pub. L. 99-514, Pub. L. 100-203, and Pub. L. 101-508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

**AMENDMENTS**

2006—Subsec. (k). Pub. L. 109-280, §1207(c)(1), added subsec. (k). Former subsec. (k) redesignated (l). See Codification note above.

Subsec. (l). Pub. L. 109-280, §1207(c)(1), redesignated subsec. (k) as (l). See Codification note above.

Subsec. (l)(1). Pub. L. 109-280, §1207(c)(2), substituted “(j), or (k)” for “or (j)”. See Codification note above.

1990—Subsec. (k). Pub. L. 101-508 added subsec. (k).

1976—Subsec. (d). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsecs. (i), (j). Pub. L. 94-455, §1904(a)(6), added subsecs. (i) and (j).

1969—Subsec. (h). Pub. L. 91-172 substituted “section 170(b)(1)(A)(iii)” for “section 503(b)(5)”.

1966—Subsec. (h). Pub. L. 89-368 added subsec. (h).

1965—Subsec. (a). Pub. L. 89-44 substituted “with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents”, for “with respect to general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents”.

Subsec. (b). Pub. L. 89-44 substituted “local telephone service” for “general telephone service” and “such service” for “such services”.

Subsec. (c). Pub. L. 89-44 substituted “International, etc., organizations” for “Certain organizations” in heading.

Subsec. (d). Pub. L. 89-44 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 89-44 substituted “any service” for “toll telephone service, telegraph service, or teletypewriter exchange service”.

Subsec. (f). Pub. L. 89-44 substituted amounts paid for any toll telephone service for amounts paid for wire mileage service, wire and equipment service, and use of any telephone or radiotelephone line or channel which constitutes general telephone service if such line or channel connects stations between any two of which there would otherwise be a toll charge.

Subsec. (g). Pub. L. 89-44 reenacted subsec. (g) without change.

Subsecs. (h) to (j). Pub. L. 89-44 struck out subsecs. (h) to (j), which related to terminal facilities in case of wire mileage service and to certain interior and private communications services.

1962—Subsec. (j). Pub. L. 87-508 added subsec. (j).

1959—Subsec. (f). Pub. L. 86-344 substituted “Common carriers and communications companies” for “Special wire service in company business” in heading, incorporated existing provisions in opening and closing statements and par. (1) and added par. (2).

1958—Subsec. (a). Pub. L. 85-859 substituted “general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents” for “local telephone service”.

Subsec. (b). Pub. L. 85-859 substituted “general telephone service, on any payment received from any person for services used” for “local telephone service, upon any payment received from any person for services or facilities utilized”.

Subsec. (c). Pub. L. 85-859 substituted “on any payment received for services furnished to an international organization, or to the American National Red Cross” for “upon any payment received for services or facilities furnished to an international organization, or any organization created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864”.

Subsec. (d). Pub. L. 85-859 substituted “on any payment received for any toll telephone service” for “with respect to long distance telephone service upon any

payment received for any telephone or radio telephone message”.

Subsec. (e). Pub. L. 85-859 substituted “toll telephone service, telegraph service, or teletypewriter exchange service” for “long distance telephone service or telegraph service” and “in furnishing such service” for “in the transmission of such dispatch, message or conversation”.

Subsec. (f). Pub. L. 85-859 substituted “any wire mileage service or wire and equipment service as is used in the conduct” for “the service described in sections 4252(d) and (e) as is utilized in the conduct”.

Subsecs. (g) to (i). Pub. L. 85-859 added subsecs. (g) to (i).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109-280, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11217(c)(2), Nov. 5, 1990, 104 Stat. 1388-438, provided that:

“(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to any claim for exemption made after the date of the enactment of this Act [Nov. 5, 1990].

“(B) DURATION OF EXISTING CERTIFICATES.—Any annual certificate of exemption effective on the date of the enactment of this Act [Nov. 5, 1990] shall remain effective until the end of the annual period.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(6) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-368 applicable to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date and to amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered except with respect to such services as were rendered more than two months before such date and, as to services rendered more than 2 months before such date, direction that the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, be applied, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89-44, set out as a note under section 4251 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-508 applicable with respect to services furnished on or after Jan. 1, 1963, see section 4(c) of Pub. L. 87-508, set out as a note under section 4252 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-344, §4(b), Sept. 21, 1959, 73 Stat. 619, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid on or after January 1, 1959, for services rendered on or after such date.

“(2) The amendment made by subsection (a) [amending this section] shall not apply with respect to amounts paid pursuant to bills rendered before January 1, 1959. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no bill was rendered before such date, such amendment shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in effect at the time such services were rendered shall apply to the amounts paid for such services.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85-859, see section 133(b) of Pub. L. 85-859, set out as a note under section 4251 of this title.

### § 4254. Computation of tax

#### (a) General rule

If a bill is rendered the taxpayer for local telephone service or toll telephone service—

(1) the amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that

(2) if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then (A) the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and (B) the tax on the remaining items not included in any such group shall be based on the charge for each item separately.

#### (b) Where payment is made for toll telephone service in coin-operated telephones

If the tax imposed by section 4251 with respect to toll telephone service is paid by inserting coins in coin-operated telephones, tax shall be computed to the nearest multiple of 5 cents, except that, where the tax is midway between multiples of 5 cents, the next higher multiple shall apply.

#### (c) Certain State and local taxes not included

For purposes of this subchapter, in determining the amounts paid for communications services, there shall not be included the amount of any State or local tax imposed on the furnishing or sale of such services, if the amount of such tax is separately stated in the bill.

(Aug. 16, 1954, ch. 736, 68A Stat. 504; Pub. L. 85-859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1291; Pub. L. 89-44, title III, §302, June 21, 1965, 79 Stat. 147; Pub. L. 95-172, §2(a), Nov. 12, 1977, 91 Stat. 1358.)

#### CODIFICATION

This subchapter, relating to the tax on communications was repealed by Pub. L. 90-364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981,

for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, Pub. L. 98-369, Pub. L. 99-514, Pub. L. 100-203, and Pub. L. 101-508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

#### AMENDMENTS

1977—Subsec. (c), Pub. L. 95-172 added subsec. (c).

1965—Subsec. (a), Pub. L. 89-44 substituted “local telephone service or toll telephone service” for “general telephone service, toll telephone service, or telegraph service”.

Subsec. (b), Pub. L. 89-44 substituted “toll telephone service” for “toll telephone service or telegraph service” in catchline and text.

1958—Subsec. (a), Pub. L. 85-859 provided that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax with respect to each group shall be based shall be the sum of all items within that group, and the tax on remaining items not included in any such group shall be based on the charge of each item separately.

Subsec. (b), Pub. L. 85-859 substituted “toll telephone service” for “long distance telephone service”.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-172, §2(b), Nov. 12, 1977, 91 Stat. 1358, provided that: “The amendment made by this section [amending this section] shall take effect only with respect to amounts paid pursuant to bills first rendered on or after the first day of the first month which begins more than 20 days after the date of the enactment of this Act [Nov. 12, 1977]. For purposes of the preceding sentence, in the case of communications services rendered more than 2 months before the effective date provided in the preceding sentence, no bill shall be treated as having been first rendered on or after such effective date.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for service rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89-44, set out as a note under section 4251 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85-859, see section 133(b) of Pub. L. 85-859, set out as a note under section 4251 of this title.

### Subchapter C—Transportation by Air

- Part I. Persons.
- II. Property.
- III. Special provisions relating to taxes on transportation by air.<sup>1</sup>

#### PART I—PERSONS

- Sec. 4261. Imposition of tax.
- 4262. Definition of taxable transportation.
- 4263. Special rules.

#### AMENDMENTS

1970—Pub. L. 91-258, title II, §205(c)(4), May 21, 1970, 84 Stat. 242, substituted “Transportation by Air” for

“Transportation of Persons by Air” in subchapter heading, inserted part I to III headings in subchapter analysis, inserted “PART I—PERSONS” as analysis heading preceding section 4261, struck out item 4263, and redesignated item 4264 as 4263.

1962—Pub. L. 87-508, §5(b), June 28, 1962, 76 Stat. 115, substituted “Transportation of Persons by Air” for “Transportation of Persons” in subchapter heading.

1958—Pub. L. 85-475, §4(b)(2), June 30, 1958, 72 Stat. 260, substituted “Transportation of Persons” for “Transportation” in subchapter heading and struck out parts I-III, which were included in subchapter C.

1956—Act July 25, 1956, ch. 725, §5, 70 Stat. 646, added items 4262 and 4264 and redesignated former item 4262 as 4263.

### § 4261. Imposition of tax

#### (a) In general

There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

#### (b) Domestic segments of taxable transportation

##### (1) In general

There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount determined in accordance with the following table for the period in which the segment begins:

#### In the case of segments beginning:

	The tax is:
After September 30, 1997, and before October 1, 1998 .....	\$1.00
After September 30, 1998, and before October 1, 1999 .....	\$2.00
After September 30, 1999, and before January 1, 2000 .....	\$2.25
During 2000 .....	\$2.50
During 2001 .....	\$2.75
During 2002 or thereafter .....	\$3.00.

##### (2) Domestic segment

For purposes of this section, the term “domestic segment” means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

##### (3) Changes in segments by reason of rerouting

If—

(A) transportation is purchased between 2 locations on specified flights, and

(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

#### (c) Use of international travel facilities

##### (1) In general

There is hereby imposed a tax of \$12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

##### (2) Exception for transportation entirely taxable under subsection (a)

This subsection shall not apply to any transportation all of which is taxable under sub-

<sup>1</sup> So in original. Does not conform to part heading.

section (a) (determined without regard to sections 4281 and 4282).

**(3) Special rule for Alaska and Hawaii**

In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of \$6.

**(d) By whom paid**

Except as provided in section 4263(a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

**(e) Special rules**

**(1) Segments to and from rural airports**

**(A) Exception from segment tax**

The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

**(B) Rural airport**

For purposes of this paragraph, the term “rural airport” means, with respect to any calendar year, any airport if—

- (i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles) during the second preceding calendar year from such airport, and
- (ii) such airport—

(I) is not located within 75 miles of another airport which is not described in clause (i),

(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph, or

(III) is not connected by paved roads to another airport.

**(2) Amounts paid outside the United States**

In the case of amounts paid outside the United States for taxable transportation, the taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

**(3) Amounts paid for right to award free or reduced rate air transportation**

**(A) In general**

Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

**(B) Controlled group**

For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

**(C) Regulations**

The Secretary shall prescribe rules which reallocate items of income, deduction, cred-

it, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

**(4) Inflation adjustment of dollar rates of tax**

**(A) In general**

In the case of taxable events in a calendar year after the last nonindexed year, the \$3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) shall be increased by an amount equal to—

- (i) such dollar amount, multiplied by
- (ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for “calendar year 2016” in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

**(B) Last nonindexed year**

For purposes of subparagraph (A), the last nonindexed year is—

- (i) 2002 in the case of the \$3.00 amount contained in subsection (b), and
- (ii) 1998 in the case of the dollar amounts contained in subsection (c).

**(C) Taxable event**

For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the beginning of the domestic segment shall be treated as the taxable event.

**(D) Special rule for amounts paid for domestic segments beginning after 2002**

If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.

**(5) Amounts paid for aircraft management services**

**(A) In general**

No tax shall be imposed by this section or section 4271 on any amounts paid by an aircraft owner for aircraft management services related to—

- (i) maintenance and support of the aircraft owner’s aircraft, or
- (ii) flights on the aircraft owner’s aircraft.

**(B) Aircraft management services**

For purposes of subparagraph (A), the term “aircraft management services” includes—

- (i) assisting an aircraft owner with administrative and support services, such as scheduling, flight planning, and weather forecasting,
- (ii) obtaining insurance,
- (iii) maintenance, storage and fueling of aircraft,

- (iv) hiring, training, and provision of pilots and crew,
- (v) establishing and complying with safety standards, and
- (vi) such other services as are necessary to support flights operated by an aircraft owner.

**(C) Lessee treated as aircraft owner**

**(i) In general**

For purposes of this paragraph, the term “aircraft owner” includes a person who leases the aircraft other than under a disqualified lease.

**(ii) Disqualified lease**

For purposes of clause (i), the term “disqualified lease” means a lease from a person providing aircraft management services with respect to such aircraft (or a related person (within the meaning of section 465(b)(3)(C)) to the person providing such services), if such lease is for a term of 31 days or less.

**(D) Pro rata allocation**

In the case of amounts paid to any person which (but for this subsection) are subject to the tax imposed by subsection (a), a portion of which consists of amounts described in subparagraph (A), this paragraph shall apply on a pro rata basis only to the portion which consists of amounts described in such subparagraph.

**(f) Exemption for certain uses**

No tax shall be imposed under subsection (a) or (b) on air transportation—

(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.

**(g) Exemption for air ambulances providing certain emergency medical transportation**

No tax shall be imposed under this section or section 4271 on any air transportation for the purpose of providing emergency medical services—

(1) by helicopter, or

(2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

**(h) Exemption for skydiving uses**

No tax shall be imposed by this section or section 4271 on any air transportation exclusively for the purpose of skydiving.

**(i) Exemption for seaplanes**

No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.

**(j) Exemption for aircraft in fractional ownership aircraft programs**

No tax shall be imposed by this section or section 4271 on any air transportation if tax is imposed under section 4043 with respect to the fuel used in such transportation. This subsection shall not apply after March 31, 2018.

**(k) Application of taxes**

**(1) In general**

The taxes imposed by this section shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on March 31, 2018, and

(B) amounts paid during such period for transportation beginning after such period.

**(2) Refunds**

If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

(Aug. 16, 1954, ch. 736, 68A Stat. 506; July 25, 1956, ch. 725, §§1, 4(b), 70 Stat. 644, 646; Pub. L. 86-75, §4, June 30, 1959, 73 Stat. 158; Pub. L. 86-564, title II, §202(a)(3), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, §3(a)(3), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, §5(a), (b), June 28, 1962, 76 Stat. 115; Pub. L. 88-52, §3(a)(3), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, §2(a)(3), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title III, §303(a), June 21, 1965, 79 Stat. 148; Pub. L. 91-258, title II, §203(a), May 21, 1970, 84 Stat. 238; Pub. L. 94-455, title XIX, §1904(a)(7), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 96-298, §1(b), July 1, 1980, 94 Stat. 829; Pub. L. 97-248, title II, §280(a), Sept. 3, 1982, 96 Stat. 564; Pub. L. 98-369, div. A, title X, §1018(b), July 18, 1984, 98 Stat. 1021; Pub. L. 99-514, title XVIII, §1878(c)(2), Oct. 22, 1986, 100 Stat. 2903; Pub. L. 100-223, title IV, §§402(a)(1), 404(a), (c), Dec. 30, 1987, 101 Stat. 1532, 1533; Pub. L. 101-239, title VII, §7503(a), Dec. 19, 1989, 103 Stat. 2362; Pub. L. 101-508, title XI, §11213(a)(1), (d)(1), Nov. 5, 1990, 104 Stat. 1388-432, 1388-435; Pub. L. 103-272, §5(g)(2), July 5, 1994, 108 Stat. 1374; Pub. L. 104-188, title I, §1609(b), (d), (e), Aug. 20, 1996, 110 Stat. 1841, 1842; Pub. L. 105-2, §2(b)(1), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105-34, title X, §1031(b)(1), (c)(1), (2), title XIV, §1435(a), title XVI, §1601(f)(4)(D), Aug. 5, 1997, 111 Stat. 929, 930, 1052, 1091; Pub. L. 108-176, title IX, §902(a), Dec. 12, 2003, 117 Stat. 2598; Pub. L. 109-59, title XI, §§11121(c), 11122(a), 11123(a), Aug. 10, 2005, 119 Stat. 1951, 1952; Pub. L. 109-135, title

IV, § 412(vv), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110-161, div. K, title I, § 116(b)(1), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110-190, § 2(b)(1), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110-253, § 2(b)(1), June 30, 2008, 122 Stat. 2417; Pub. L. 110-330, § 2(b)(1), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111-12, § 2(b)(1), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111-69, § 2(b)(1), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111-116, § 2(b)(1), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111-153, § 2(b)(1), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111-161, § 2(b)(1), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111-197, § 2(b)(1), July 2, 2010, 124 Stat. 1353; Pub. L. 111-216, title I, § 101(b)(1), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111-249, § 2(b)(1), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111-329, § 2(b)(1), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112-7, § 2(b)(1), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112-16, § 2(b)(1), May 31, 2011, 125 Stat. 218; Pub. L. 112-21, § 2(b)(1), June 29, 2011, 125 Stat. 233; Pub. L. 112-27, § 2(b)(1), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112-30, title II, § 202(b)(1), Sept. 16, 2011, 125 Stat. 357; Pub. L. 112-91, § 2(b)(1), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112-95, title XI, §§ 1101(b)(1), 1103(c), Feb. 14, 2012, 126 Stat. 148, 151; Pub. L. 113-295, div. A, title II, § 221(a)(104), Dec. 19, 2014, 128 Stat. 4053; Pub. L. 114-55, title II, § 202(b)(1), (c)(2), Sept. 30, 2015, 129 Stat. 525; Pub. L. 114-141, title II, § 202(b)(1), (c)(2), Mar. 30, 2016, 130 Stat. 324, 325; Pub. L. 114-190, title I, § 1202(b)(1), (c)(2), July 15, 2016, 130 Stat. 619; Pub. L. 115-63, title II, § 202(b)(1), (c)(2), Sept. 29, 2017, 131 Stat. 1171; Pub. L. 115-97, title I, §§ 11002(d)(1)(FF), 13822(a), Dec. 22, 2017, 131 Stat. 2060, 2182.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Service announcements listed in a table below.*

#### REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (e)(1)(B)(ii)(II), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

The Airport and Airway Development Act of 1970, referred to in subsec. (f), is title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which was classified principally to chapter 25 (§ 1701 et seq.) of former Title 49, Transportation. Sections 1 to 30 of title I of Pub. L. 91-258, which enacted sections 1701 to 1703, 1711 to 1713, and 1714 to 1730 of former Title 49 and a provision set out as a note under section 1701 of former Title 49, were repealed by Pub. L. 97-248, title V, § 523(a), Sept. 3, 1982, 96 Stat. 695. Sections 31, 51, 52(a), (b)(4), (6), (c), (d), and 53 of title I of Pub. L. 91-258 were repealed by Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (k)(1)(A)(i), is the date of enactment of Pub. L. 105-2, which was approved Feb. 28, 1997.

#### AMENDMENTS

2017—Subsec. (e)(4)(A)(ii). Pub. L. 115-97, § 11002(d)(1)(FF), substituted “for ‘calendar year 2016’ in subparagraph (A)(ii)” for “for ‘calendar year 1992’ in subparagraph (B)”.

Subsec. (e)(5). Pub. L. 115-97, § 13822(a), added par. (5).  
Subsec. (j). Pub. L. 115-63, § 202(c)(2), substituted “March 31, 2018” for “September 30, 2017”.

Subsec. (k)(1)(A)(ii). Pub. L. 115-63, § 202(b)(1), substituted “March 31, 2018” for “September 30, 2017”.

2016—Subsec. (j). Pub. L. 114-190, § 1202(c)(2), substituted “September 30, 2017” for “July 15, 2016”.

Pub. L. 114-141, § 202(c)(2), substituted “July 15, 2016” for “March 31, 2016”.

Subsec. (k)(1)(A)(ii). Pub. L. 114-190, § 1202(b)(1), substituted “September 30, 2017” for “July 15, 2016”.

Pub. L. 114-141, § 202(b)(1), substituted “July 15, 2016” for “March 31, 2016”.

2015—Subsec. (j). Pub. L. 114-55, § 202(c)(2), substituted “March 31, 2016” for “September 30, 2015”.

Subsec. (k)(1)(A)(ii). Pub. L. 114-55, § 202(b)(1), substituted “March 31, 2016” for “September 30, 2015”.

2014—Subsec. (e)(1)(C). Pub. L. 113-295, § 221(a)(104)(A), struck out subpar. (C) which provided for no phase-in of reduced ticket tax for certain transportation.

Subsec. (e)(5). Pub. L. 113-295, § 221(a)(104)(B), struck out par. (5) which related to rates of ticket tax for transportation beginning before Oct. 1, 1999.

2012—Subsec. (j). Pub. L. 112-95, § 1103(c), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(1)(A)(ii). Pub. L. 112-95, § 1101(b)(1), substituted “September 30, 2015” for “February 17, 2012”.

Pub. L. 112-91 substituted “February 17, 2012” for “January 31, 2012”.

Subsec. (k). Pub. L. 112-95, § 1103(c), redesignated subsec. (j) as (k).

2011—Subsec. (j)(1)(A)(ii). Pub. L. 112-30 substituted “January 31, 2012” for “September 16, 2011”.

Pub. L. 112-27 substituted “September 16, 2011” for “July 22, 2011”.

Pub. L. 112-21 substituted “July 22, 2011” for “June 30, 2011”.

Pub. L. 112-16 substituted “June 30, 2011” for “May 31, 2011”.

Pub. L. 112-7 substituted “May 31, 2011” for “March 31, 2011”.

2010—Subsec. (j)(1)(A)(ii). Pub. L. 111-329 substituted “March 31, 2011” for “December 31, 2010”.

Pub. L. 111-249 substituted “December 31, 2010” for “September 30, 2010”.

Pub. L. 111-216 substituted “September 30, 2010” for “August 1, 2010”.

Pub. L. 111-197 substituted “August 1, 2010” for “July 3, 2010”.

Pub. L. 111-161 substituted “July 3, 2010” for “April 30, 2010”.

Pub. L. 111-153 substituted “April 30, 2010” for “March 31, 2010”.

2009—Subsec. (j)(1)(A)(ii). Pub. L. 111-116 substituted “March 31, 2010” for “December 31, 2009”.

Pub. L. 111-69 substituted “December 31, 2009” for “September 30, 2009”.

Pub. L. 111-12 substituted “September 30, 2009” for “March 31, 2009”.

2008—Subsec. (j)(1)(A)(ii). Pub. L. 110-330 substituted “March 31, 2009” for “September 30, 2008”.

Pub. L. 110-253 substituted “September 30, 2008” for “June 30, 2008”.

Pub. L. 110-190 substituted “June 30, 2008” for “February 29, 2008”.

2007—Subsec. (j)(1)(A)(ii). Pub. L. 110-161 substituted “February 29, 2008” for “September 30, 2007”.

2005—Subsec. (e)(1)(B)(i). Pub. L. 109-59, § 11122(a)(1), inserted “(in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles)” after “by air”.

Subsec. (e)(1)(B)(ii)(III). Pub. L. 109-59, § 11122(a)(2), added subcl. (III).

Subsec. (e)(4)(C). Pub. L. 109-135 substituted “imposed by subsection (b)” for “imposed subsection (b)”.

Subsec. (f). Pub. L. 109-59, § 11121(c), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “No tax shall be imposed under subsection (a) or (b) on air transportation by helicopter for the purpose of—

“(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or



“(2) the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.”

Subsecs. (i), (j). Pub. L. 109–59, §11123(a), added subsec. (i) and redesignated former subsec. (i) as (j).

2003—Subsec. (e)(4)(D). Pub. L. 108–176 added subpar. (D).

1997—Subsec. (a). Pub. L. 105–34, §1031(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “There is hereby imposed upon the amount paid for taxable transportation (as defined in section 4262) of any person a tax equal to 10 percent of the amount so paid. In the case of amounts paid outside of the United States for taxable transportation, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States.”

Subsec. (b). Pub. L. 105–34, §1031(c)(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation and with respect to which a tax is imposed by subsection (a), a tax equal to 10 percent of the amount so paid.”

Subsec. (c). Pub. L. 105–34, §1031(c)(1), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “There is hereby imposed a tax of \$6 upon any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins in the United States. This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).”

Subsecs. (e), (f). Pub. L. 105–34, §1031(c)(2), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105–34, §1031(c)(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 105–2 amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: “The taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997.”

Subsec. (g)(1)(A)(ii). Pub. L. 105–34, §1031(b)(1), substituted “September 30, 2007” for “September 30, 1997”.

Subsec. (g)(2). Pub. L. 105–34, §1601(f)(4)(D), inserted “on that flight” after “dedicated”.

Subsec. (h). Pub. L. 105–34, §1435(a), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 105–34, §1031(c)(2), redesignated subsec. (g) as (h).

Subsec. (i). Pub. L. 105–34, §1435(a), redesignated subsec. (h) as (i).

1996—Subsec. (e). Pub. L. 104–188, §1609(e), inserted at end “In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.”

Subsec. (f). Pub. L. 104–188, §1609(d), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

“(f) EXEMPTION FOR CERTAIN EMERGENCY MEDICAL TRANSPORTATION.—No tax shall be imposed under this section or section 4271 on any air transportation by helicopter for the purpose of providing emergency medical services if such helicopter—

“(1) does not take off from, or land at, a facility eligible for assistance under the Airport and Airway De-

velopment Act of 1970 during such transportation, and

“(2) does not otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such transportation.”

Subsec. (g). Pub. L. 104–188, §1609(b), substituted “January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997” for “January 1, 1996”.

1994—Subsecs. (e), (f)(2). Pub. L. 103–272, §5(g)(2), substituted “section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code,” for “the Airport and Airway Improvement Act of 1982”.

1990—Subsecs. (a), (b). Pub. L. 101–508, §11213(a)(1), substituted “10 percent” for “8 percent”.

Subsec. (g). Pub. L. 101–508, §11213(d)(1), substituted “January 1, 1996” for “January 1, 1991”.

1989—Subsec. (c). Pub. L. 101–239 substituted “\$6” for “\$3”.

1987—Subsec. (e). Pub. L. 100–223, §404(c), which directed the substitution of “Improvement Act” for “System Improvement Act” could not be executed because such words do not appear.

Subsec. (f). Pub. L. 100–223, §404(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 100–223, §402(a)(1), substituted “January 1, 1991” for “January 1, 1988”.

Subsec. (g). Pub. L. 100–223, §404(a), redesignated former subsec. (f) as (g).

1986—Subsec. (e)(1). Pub. L. 99–514, amended par. (1) generally. Prior to amendment, par. (1) read as follows: “transporting individuals, equipment, or supplies in—

“(A) the exploration for, or the development or removal of, hard minerals, or

“(B) the exploration for oil or gas, or”.

1984—Subsec. (e)(1). Pub. L. 98–369 amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1982—Subsec. (e). Pub. L. 97–248 substituted provisions relating to exemptions for certain helicopter uses for provisions that effective with respect to transportation beginning after Sept. 30, 1980, the rate of taxes imposed by subsecs. (a) and (b) would be 5 percent and taxes imposed by subsec. (c) would not apply.

Subsec. (f). Pub. L. 97–248 added subsec. (f).

1980—Subsec. (e). Pub. L. 96–298 substituted “September 30, 1980” for “June 30, 1980”.

1976—Subsec. (a). Pub. L. 94–455, §1904(a)(7)(A), struck out “which begins after June 30, 1970” after “any person”.

Subsec. (b). Pub. L. 94–455, §1904(a)(7)(A), struck out “which begins after June 30, 1970” after “with transportation”.

Subsec. (c). Pub. L. 94–455, §1904(a)(7)(B), struck out “and begins after June 30, 1970” after “United States”.

1970—Subsec. (a). Pub. L. 91–258 consolidated former provisions of subsecs. (a) and (b) for imposition of tax on amounts paid within and outside the United States, substituting an 8 percent rate commencing after June 30, 1970, for prior 5 percent rate commencing after Nov. 15, 1962.

Subsec. (b). Pub. L. 91–258 redesignated subsec. (c) as (b), substituting an 8 percent rate in connection with transportation which begins after June 30, 1970, and with respect to which a tax is imposed by subsec. (a) for prior 5 percent rate in connection with transportation which began after Nov. 15, 1962, and with respect to which a tax had been imposed by former provisions of subsecs. (a) and (b). Former subsec. (b) provisions for imposition of tax on amounts paid outside the United States were incorporated in subsec. (a).

Subsecs. (c), (d). Pub. L. 91–258 added subsec. (c), redesignated former subsec. (c) as (d), and substituted “section 4263(a)” for “section 4264”.

Subsec. (e). Pub. L. 91–258 added subsec. (e).

1965—Pub. L. 89–44 substituted “November 15, 1962” for “November 15, 1962, and before July 1, 1965” wherever appearing.

1964—Pub. L. 88-348 substituted “July 1, 1965” for “July 1, 1964” wherever appearing.

1963—Pub. L. 88-52 substituted “July 1, 1964” for “July 1, 1963” wherever appearing.

1962—Subsecs. (a), (b). Pub. L. 87-508, §5(b), struck out imposition of tax on transportation of persons by rail, motor vehicle, or water and substituted “tax equal to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963” for “tax equal to 10 percent of the amount so paid for transportation which begins before November 16, 1962”.

Pub. L. 87-508, §5(a), substituted provisions imposing a tax equal to 10 percent of the amount paid for transportation which begins before Nov. 16, 1962, for provisions imposing a tax equal to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

Subsec. (c). Pub. L. 87-508, §5(b), substituted “tax equivalent to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963” for “tax equivalent to 10 percent of the amount so paid in connection with transportation which begins before November 16, 1962”.

Pub. L. 87-508, §5(a), substituted provision imposing a tax equivalent to 10 percent of the amount paid in connection with transportation which begins before Nov. 16, 1962 for provision imposing a tax equivalent to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

1961—Pub. L. 87-72 substituted “July 1, 1962” for “July 1, 1961”, wherever appearing.

1960—Pub. L. 86-564 substituted “July 1, 1961” for “July 1, 1960” wherever appearing.

1959—Pub. L. 86-75 reduced tax on transportation of persons from ten to five percent effective July 1, 1960.

1956—Subsec. (a). Act July 25, 1956, §1, substituted “taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air a tax” for “the transportation of persons by rail, motor vehicle, water, or air within or without the United States a tax”.

Subsec. (b). Act July 25, 1956, §1, substituted “taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air, but only if such transportation begins and ends in the United States” for “transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States”.

Subsec. (d). Act July 25, 1956, §4(b), substituted “Except as provided in section 4264, the” for “The”.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(1)(FF) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

Pub. L. 115-97, title I, §13822(b), Dec. 22, 2017, 131 Stat. 2183, provided that: “The amendment made by this section [amending this section] shall apply to amounts paid after the date of the enactment of this Act [Dec. 22, 2017].”

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by section 1101(b)(1) of Pub. L. 112-95 effective Feb. 18, 2012, see section 1101(c) of Pub. L. 112-95, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

Pub. L. 112-95, title XI, §1103(d)(3), Feb. 14, 2012, 126 Stat. 151, provided that: “The amendments made by subsection (c) [amending this section] shall apply to taxable transportation provided after March 31, 2012.”

Amendment by Pub. L. 112-91 effective Feb. 1, 2012, see section 2(c) of Pub. L. 112-91, set out as an Effective

and Termination Dates of 2012 Amendment note under section 4081 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-30 effective Sept. 17, 2011, see section 202(c) of Pub. L. 112-30, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-27 effective July 23, 2011, see section 2(c) of Pub. L. 112-27, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-21 effective July 1, 2011, see section 2(c) of Pub. L. 112-21, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-16 effective June 1, 2011, see section 2(c) of Pub. L. 112-16, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-7 effective Apr. 1, 2011, see section 2(c) of Pub. L. 112-7, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-329 effective Jan. 1, 2011, see section 2(c) of Pub. L. 111-329, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-249 effective Oct. 1, 2010, see section 2(c) of Pub. L. 111-249, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-216 effective Aug. 2, 2010, see section 101(c) of Pub. L. 111-216, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-197 effective July 4, 2010, see section 2(c) of Pub. L. 111-197, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-161 effective May 1, 2010, see section 2(c) of Pub. L. 111-161, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-153 effective Apr. 1, 2010, see section 2(c) of Pub. L. 111-153, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-116 effective Jan. 1, 2010, see section 2(c) of Pub. L. 111-116, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-69 effective Oct. 1, 2009, see section 2(c) of Pub. L. 111-69, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-12 effective Apr. 1, 2009, see section 2(c) of Pub. L. 111-12, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-330 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110-330, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110-253 effective July 1, 2008, see section 2(c) of Pub. L. 110-253, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110-190 effective Mar. 1, 2008, see section 2(c) of Pub. L. 110-190, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110-161, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, §1121(d), Aug. 10, 2005, 119 Stat. 1952, provided that: “The amendments made by this section [amending this section and section 6420 of this title] shall apply to fuel use or air transportation after September 30, 2005.”

Pub. L. 109-59, title XI, §1122(b), Aug. 10, 2005, 119 Stat. 1952, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 2005.”

Amendment by section 11123(a) of Pub. L. 109-59 applicable to transportation beginning after Sept. 30, 2005,

see section 11123(c) of Pub. L. 109-59, set out as a note under section 4083 of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-176, title IX, §902(b), Dec. 12, 2003, 117 Stat. 2598, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105-34] to which they relate.”

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105-34, title X, §1031(e)(2), Aug. 5, 1997, 111 Stat. 932, provided that:

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (b) and (c) [amending this section and sections 4263 and 4271 of this title] shall apply to transportation beginning on or after October 1, 1997.

“(B) TREATMENT OF AMOUNTS PAID FOR TICKETS PURCHASED BEFORE OCTOBER 1, 1997.—The amendments made by subsection (c) [amending this section and section 4263 of this title] shall not apply to amounts paid before October 1, 1997; except that—

“(i) the amendment made to section 4261(c) of the Internal Revenue Code of 1986 shall apply to amounts paid more than 7 days after the date of the enactment of this Act [Aug. 5, 1997] for transportation beginning on or after October 1, 1997, and

“(ii) the amendment made to section 4263(c) of such Code shall apply to the extent related to taxes imposed under the amendment made to such section 4261(c) on the amounts described in clause (i).

“(C) AMOUNTS PAID FOR RIGHT TO AWARD MILEAGE AWARDS.—

“(i) IN GENERAL.—Paragraph (3) of section 4261(e) of the Internal Revenue Code of 1986 (as added by the amendment made by subsection (c)) shall apply to amounts paid (and other benefits provided) after September 30, 1997.

“(ii) PAYMENTS WITHIN CONTROLLED GROUP.—For purposes of clause (i), any amount paid after June 11, 1997, and before October 1, 1997, by 1 member of a controlled group for a right which is described in such section 4261(e)(3) and is furnished by another member of such group after September 30, 1997, shall be treated as paid after September 30, 1997. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of such Code shall be treated as members of a controlled group.”

Pub. L. 105-34, title XIV, §1435(c)(1), Aug. 5, 1997, 111 Stat. 1053, provided that: “The amendment made by subsection (a) [amending this section] shall apply to amounts paid after September 30, 1997.”

Amendment by section 1601(f)(4)(D) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

Pub. L. 105-2, §2(e)(2), Feb. 28, 1997, 111 Stat. 7, provided that:

“(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and section 4271 of this title] shall apply to transportation beginning on or after such 7th day [means the 7th day after Feb. 28, 1997].

“(B) EXCEPTION FOR CERTAIN PAYMENTS.—Except as provided in subparagraph (C), the amendments made by subsection (b) shall not apply to any amount paid before such 7th day.

“(C) PAYMENTS OF PROPERTY TRANSPORTATION TAX WITHIN CONTROLLED GROUP.—In the case of the tax imposed by section 4271 of the Internal Revenue Code of 1986, subparagraph (B) shall not apply to any amount paid by 1 member of a controlled group for transportation furnished by another member of such group. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as members of a controlled group.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective on 7th calendar day after Aug. 20, 1996, but not applicable to any amount paid before such date, see section 1609(i) of Pub. L. 104-188, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11213(a)(3), Nov. 5, 1990, 104 Stat. 1388-432, provided that: “The amendments made by this subsection [amending this section and section 4271 of this title] shall apply to transportation beginning after November 30, 1990, but shall not apply to amounts paid on or before such date.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7503(b), Dec. 19, 1989, 103 Stat. 2362, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after December 31, 1989, which was not paid for before such date.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-223, title IV, §404(d)(1), Dec. 30, 1987, 101 Stat. 1533, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transportation beginning after September 30, 1988, but shall not apply to amounts paid on or before such date.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title X, §1018(c)(2), July 18, 1984, 98 Stat. 1022, provided that: “The amendment made by subsection (b) [amending this section] shall apply to transportation beginning after March 31, 1984, but shall not apply to any amount paid on or before such date.”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §280(d), Sept. 3, 1982, 96 Stat. 565, provided that: “The amendments made by this section [amending this section and sections 4271, 4281, and 6156 of this title and repealing sections 4491 to 4494 and 6426 of this title] shall apply with respect to transportation beginning after August 31, 1982; except that such amendments shall not apply to any amount paid on or before such date.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VII, §701(b)(3), June 21, 1965, 79 Stat. 157, provided that: “The amendments made by section 303 [amending this section] shall apply with respect to amounts paid for transportation, and amounts paid for accommodations in connection with transportation, beginning on or after July 1, 1965.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-508, §5(b), June 28, 1962, 76 Stat. 115, provided that the amendment made by that section is ef-

fective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Act July 25, 1956, ch. 725, §6, 70 Stat. 646, provided that: “The amendments made by this Act [amending this section and sections 4262 to 4264, 4291, and 6421 of this title] shall apply to amounts paid on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act [July 25, 1956] for transportation commencing on or after such first day.”

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposits of taxes imposed by this section which would be required to be made after Aug. 14, 1997, and before Oct. 1, 1997, to be Oct. 10, 1997, and due date for deposits of taxes imposed by this section which would be required to be made after Aug. 14, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105-34, set out as a note under section 6302 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2011—Internal Revenue News Release IR 2010-129, Dec. 29, 2010.

2010—Internal Revenue News Release IR 2009-120, Dec. 23, 2009.

**§ 4262. Definition of taxable transportation**

**(a) Taxable transportation; in general**

For purposes of this part, except as provided in subsection (b), the term “taxable transportation” means—

(1) transportation by air which begins in the United States or in the 225-mile zone and ends in the United States or in the 225-mile zone; and

(2) in the case of transportation by air other than transportation described in paragraph (1), that portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3)).

**(b) Exclusion of certain travel**

For purposes of this part, the term “taxable transportation” does not include that portion of any transportation by air which meets all 4 of the following requirements:

(1) such portion is outside the United States;

(2) neither such portion nor any segment thereof is directly or indirectly—

(A) between (i) a point where the route of the transportation leaves or enters the continental United States, or (ii) a port or station in the 225-mile zone, and

(B) a port or station in the 225-mile zone;

(3) such portion—

(A) begins at either (i) the point where the route of the transportation leaves the United States, or (ii) a port or station in the 225-mile zone, and

(B) ends at either (i) the point where the route of the transportation enters the United States, or (ii) a port or station in the 225-mile zone; and

(4) a direct line from the point (or the port or station) specified in paragraph (3)(A), to the point (or the port or station) specified in paragraph (3)(B), passes through or over a point which is not within 225 miles of the United States.

**(c) Definitions**

For purposes of this section—

**(1) Continental United States**

The term “continental United States” means the District of Columbia and the States other than Alaska and Hawaii.

**(2) 225-mile zone**

The term “225-mile zone” means that portion of Canada and Mexico which is not more than 225 miles from the nearest point in the continental United States.

**(3) Uninterrupted international air transportation**

The term “uninterrupted international air transportation” means any transportation by air which is not transportation described in subsection (a)(1) and in which—

(A) the scheduled interval between (i) the beginning or end of the portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States and (ii) the end or beginning of the other portion of such transportation is not more than 12 hours, and

(B) the scheduled interval between the beginning or end and the end or beginning of any two segments of the portion of such transportation referred to in subparagraph (A)(i) is not more than 12 hours.

For purposes of this paragraph, in the case of personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform at their own expense when on official leave, furlough, or pass, the scheduled interval described in subparagraph (A) shall be deemed to be not more than 12 hours if a ticket for the subsequent portion of such transportation is purchased within 12 hours after the end of the earlier portion of such transportation and the purchaser accepts and utilizes the first accommodations actually available to him for such subsequent portion.

**(d) Transportation**

For purposes of this part, the term “transportation” includes layover or waiting time and movement of the aircraft in deadhead service.

**(e) Authority to waive 225-mile zone provisions**

**(1) In general**

If the Secretary of the Treasury determines that Canada or Mexico has entered into a qualified agreement—

(A) the Secretary shall publish a notice of such determination in the Federal Register, and

(B) effective with respect to transportation beginning after the date specified in such notice, to the extent provided in the agreement, the term “225-mile zone” shall not include part or all of the country with respect to which such determination is made.

## (2) Termination of waiver

If a determination was made under paragraph (1) with respect to any country and the Secretary of the Treasury subsequently determines that the agreement is no longer in effect or that the agreement is no longer a qualified agreement—

(A) the Secretary shall publish a notice of such determination in the Federal Register, and

(B) subparagraph (B) of paragraph (1) shall cease to apply with respect to transportation beginning after the date specified in such notice.

## (3) Qualified agreement

For purposes of this subsection, the term “qualified agreement” means an agreement between the United States and Canada or Mexico (as the case may be)—

(A) setting forth that portion of such country which is not to be treated as within the 225-mile zone, and

(B) providing that the tax imposed by such country on transportation described in subparagraph (A) will be at a level which the Secretary of the Treasury determines to be appropriate.

## (4) Requirement that agreement be submitted to Congress

No notice may be published under paragraph (1)(A) with respect to any qualified agreement before the date 90 days after the date on which a copy of such agreement was furnished to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Added July 25, 1956, ch. 725, §3, 70 Stat. 644; amended Pub. L. 86-70, §22(b), June 25, 1959, 73 Stat. 146; Pub. L. 86-624, §18(a), July 12, 1960, 74 Stat. 416; Pub. L. 87-508, §5(b), June 28, 1962, 76 Stat. 116; Pub. L. 89-44, title VIII, §803(a), June 21, 1965, 79 Stat. 160; Pub. L. 91-258, title II, §203(b), May 21, 1970, 84 Stat. 238; Pub. L. 97-248, title II, §281A(a)(1), (2), Sept. 3, 1982, 96 Stat. 566, 567.)

### PRIOR PROVISIONS

A prior section 4262 was renumbered 4263 of this title and later repealed.

### AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97-248, §281A(a)(1), substituted “12 hours” for “6 hours” wherever appearing. Subsec. (e). Pub. L. 97-248, §281A(a)(2), added subsec. (e).

1970—Subsec. (a). Pub. L. 91-258, §203(b)(1)–(3), substituted “part” for “subchapter” in introductory text, “transportation by air” for “transportation” in par. (1), and “in the case of transportation by air” for “in the case of transportation” in par. (2), respectively.

Subsec. (b). Pub. L. 91-258, §203(b)(1), (4), substituted “part” for “subchapter” and “transportation by air which” for “transportation which”, in introductory text, respectively.

Subsec. (d). Pub. L. 91-258, §203(b)(5), added subsec. (d).

1965—Subsec. (c)(4). Pub. L. 89-44 inserted sentence relating to personnel of the Armed Forces traveling in uniform at their own expense following subpar. (B).

1962—Subsec. (a). Pub. L. 87-508 substituted in introductory phrase “subchapter” for “part” and inserted in par. (2) “, but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3))”.

Subsec. (b). Pub. L. 87-508 substituted in introductory phrase “subchapter” for “part”.

Subsec. (c)(3). Pub. L. 87-508 added par. (3).

1960—Subsec. (c)(1). Pub. L. 86-624 inserted “and Hawaii” after “Alaska”.

1959—Subsec. (c)(1). Pub. L. 86-70 substituted “the District of Columbia and the States other than Alaska” for “the existing 48 States and the District of Columbia”.

### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §281A(a)(3), Sept. 3, 1982, 96 Stat. 567, provided that: “The amendments made by this subsection [amending this section] shall apply to transportation beginning after August 31, 1982.”

### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, §803(b), June 21, 1965, 79 Stat. 160, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid for transportation beginning on or after July 1, 1965.”

### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-508, §5(b), June 28, 1962, 76 Stat. 115, provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-624 effective August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 3121 of this title.

### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86-70, set out as a note under section 3121 of this title.

### EFFECTIVE DATE

Section applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as an Effective Date of 1956 Amendment note under section 4261 of this title.

### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 4263. Special rules****(a) Payments made outside the United States for prepaid orders**

If the payment upon which tax is imposed by section 4261 is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax.

**(b) Tax deducted upon refunds**

Every person who refunds any amount with respect to a ticket or order which was purchased without payment of the tax imposed by section 4261 shall deduct from the amount refundable, to the extent available, any tax due under such section as a result of the use of a portion of the transportation purchased in connection with such ticket or order, and shall report to the Secretary the amount of any such tax remaining uncollected.

**(c) Payment of tax**

Where any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, under regulations prescribed by the Secretary, to the extent that such tax is not collected under any other provision of this subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.

**(d) Application of tax**

The tax imposed by section 4261 shall apply to any amount paid within the United States for transportation of any person by air unless the taxpayer establishes, pursuant to regulations prescribed by the Secretary, at the time of payment for the transportation, that the transportation is not transportation in respect of which tax is imposed by section 4261.

**(e) Round trips**

In applying this subchapter to a round trip, such round trip shall be considered to consist of transportation from the point of departure to the destination, and of separate transportation thereafter.

**(f) Transportation outside the northern portion of the Western Hemisphere**

In applying this subchapter to transportation any part of which is outside the northern portion of the Western Hemisphere, if the route of such transportation leaves and reenters the northern portion of the Western Hemisphere, such transportation shall be considered to consist of transportation to a point outside such northern portion, and of separate transportation thereafter. For purposes of this subsection, the term “northern portion of the Western Hemisphere” means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any country of South America.

(Added July 25, 1956, ch. 725, §4(a), 70 Stat. 645, §4264; amended Pub. L. 87-508, §5(b), June 28, 1962, 76 Stat. 117; renumbered §4263, Pub. L. 91-258, title II, §205(c)(2), May 21, 1970, 84 Stat. 242; amended Pub. L. 94-455, title XIX,

§1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title X, §1031(c)(3), Aug. 5, 1997, 111 Stat. 932.)

**PRIOR PROVISIONS**

A prior section 4263, acts Aug. 16, 1954, ch. 736, 68A Stat. 506, §4263, formerly §4262; renumbered §4263 and amended July 25, 1956, ch. 725, §2, 70 Stat. 644; Aug. 7, 1956, ch. 1024, §1, 70 Stat. 1077; June 29, 1957, Pub. L. 85-74, 71 Stat. 243; Sept. 2, 1958, Pub. L. 85-859, title I, §134, 72 Stat. 1292; June 28, 1962, Pub. L. 87-508, §5(b), 76 Stat. 117, provided for exemptions, subsecs. (a) to (d) relating to commutation travel, etc., certain organizations; members of the Armed Forces, and small aircraft on nonestablished lines, respectively, prior to repeal by Pub. L. 91-258, title II, §205(c)(1), May 21, 1970, 84 Stat. 242, effective on July 1, 1970, as provided in section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

**AMENDMENTS**

1997—Subsec. (c). Pub. L. 105-34 substituted “subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.” for “subchapter—

“(1) such tax shall be paid by the person paying for the transportation or by the person using the transportation;

“(2) such tax shall be paid within such time as the Secretary shall prescribe by regulations after whichever of the following first occurs:

“(A) the rights to the transportation expire; or

“(B) the time when the transportation becomes subject to tax; and

“(3) payment of such tax shall be made to the Secretary, to the person to whom the payment for transportation was made, or, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of such transportation.”

1976—Subsecs. (b) to (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1962—Subsec. (c)(3). Pub. L. 87-508 provided for payment of tax, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of the transportation.

Subsec. (d). Pub. L. 87-508 inserted “by air” after “transportation of any person”.

Subsec. (e). Pub. L. 87-508 substituted “subchapter” for “part”.

Subsec. (f). Pub. L. 87-508 substituted “subchapter” for “part”, struck out par. (1) designation for provision respecting transportation outside the northern portion of the Western Hemisphere and par. (2) prohibiting consideration as a stop at a port within the United States a stop at an intermediate port at which vessel is not authorized to discharge and take on passengers.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to transportation beginning on or after Oct. 1, 1997, with special rule for applicability to amounts paid before Oct. 1, 1997, see section 1031(e)(2) of Pub. L. 105-34, set out as a note under section 4261 of this title.

**EFFECTIVE DATE OF 1962 AMENDMENT**

Pub. L. 87-508, §5(b), June 28, 1962, 76 Stat. 115, provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

**EFFECTIVE DATE**

Section applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as an Effective Date of 1956 Amendment note under section 4261 of this title.

## PART II—PROPERTY

Sec.	
4271.	Imposition of tax.
4272.	Definition of taxable transportation, etc.

## AMENDMENTS

1970—Pub. L. 91-258, title II, §204, May 21, 1970, 84 Stat. 239, added “PART II—PROPERTY” and items 4271 and 4272.

**§ 4271. Imposition of tax****(a) In general**

There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property a tax equal to 6.25 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

**(b) By whom paid****(1) In general**

Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

**(2) Payments made outside the United States**

If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

**(c) Determination of amounts paid in certain cases**

For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

**(d) Application of tax****(1) In general**

The tax imposed by subsection (a) shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on March 31, 2018, and

(B) amounts paid during such period for transportation beginning after such period.

**(2) Refunds**

If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

(Added Pub. L. 91-258, title II, §204, May 21, 1970, 84 Stat. 239; amended Pub. L. 94-455, title XIX, §1904(a)(8), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 96-298, §1(b), July 1, 1980, 94 Stat. 829; Pub. L. 97-248, title II, §280(b), Sept. 3, 1982, 96 Stat. 564; Pub. L. 100-223, title IV, §402(a)(2), Dec. 30, 1987, 101 Stat. 1532; Pub. L. 101-508, title XI, §11213(a)(2), (d)(1), Nov. 5, 1990, 104 Stat. 1388-432, 1388-435; Pub. L. 104-188, title I, §1609(b), Aug. 20, 1996, 110 Stat. 1841; Pub. L. 105-2, §2(b)(2), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105-34, title X, §1031(b)(2), Aug. 5, 1997, 111 Stat. 929; Pub. L. 110-161, div. K, title I, §116(b)(2), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110-190, §2(b)(2), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110-253, §2(b)(2), June 30, 2008, 122 Stat. 2417; Pub. L. 110-330, §2(b)(2), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111-12, §2(b)(2), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111-69, §2(b)(2), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111-116, §2(b)(2), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111-153, §2(b)(2), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111-161, §2(b)(2), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111-197, §2(b)(2), July 2, 2010, 124 Stat. 1353; Pub. L. 111-216, title I, §101(b)(2), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111-249, §2(b)(2), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111-329, §2(b)(2), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112-7, §2(b)(2), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112-16, §2(b)(2), May 31, 2011, 125 Stat. 218; Pub. L. 112-21, §2(b)(2), June 29, 2011, 125 Stat. 233; Pub. L. 112-27, §2(b)(2), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112-30, title II, §202(b)(2), Sept. 16, 2011, 125 Stat. 357; Pub. L. 112-91, §2(b)(2), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112-95, title XI, §1101(b)(2), Feb. 14, 2012, 126 Stat. 148; Pub. L. 114-55, title II, §202(b)(2), Sept. 30, 2015, 129 Stat. 525; Pub. L. 114-141, title II, §202(b)(2), Mar. 30, 2016, 130 Stat. 324; Pub. L. 114-190, title I, §1202(b)(2), July 15, 2016, 130 Stat. 619; Pub. L. 115-63, title II, §202(b)(2), Sept. 29, 2017, 131 Stat. 1171.)

## REFERENCES IN TEXT

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (d)(1)(A)(i), is the date of enactment of Pub. L. 105-2, which was approved Feb. 28, 1997.

## PRIOR PROVISIONS

A prior section 4271, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to tax for the transportation of property, prior to repeal by Pub. L. 85-475, §4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85-475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

## AMENDMENTS

2017—Subsec. (d)(1)(A)(ii). Pub. L. 115-63 substituted “March 31, 2018” for “September 30, 2017”.

2016—Subsec. (d)(1)(A)(ii). Pub. L. 114-190 substituted “September 30, 2017” for “July 15, 2016”.

Pub. L. 114-141 substituted “July 15, 2016” for “March 31, 2016”.

2015—Subsec. (d)(1)(A)(ii). Pub. L. 114-55 substituted “March 31, 2016” for “September 30, 2015”.

2012—Subsec. (d)(1)(A)(ii). Pub. L. 112-95 substituted “September 30, 2015” for “February 17, 2012”.

Pub. L. 112-91 substituted “February 17, 2012” for “January 31, 2012”.

2011—Subsec. (d)(1)(A)(ii). Pub. L. 112-30 substituted “January 31, 2012” for “September 16, 2011”.

Pub. L. 112-27 substituted “September 16, 2011” for “July 22, 2011”.

Pub. L. 112-21 substituted “July 22, 2011” for “June 30, 2011”.

Pub. L. 112-16 substituted “June 30, 2011” for “May 31, 2011”.

Pub. L. 112-7 substituted “May 31, 2011” for “March 31, 2011”.

2010—Subsec. (d)(1)(A)(ii). Pub. L. 111-329 substituted “March 31, 2011” for “December 31, 2010”.

Pub. L. 111-249 substituted “December 31, 2010” for “September 30, 2010”.

Pub. L. 111-216 substituted “September 30, 2010” for “August 1, 2010”.

Pub. L. 111-197 substituted “August 1, 2010” for “July 3, 2010”.

Pub. L. 111-161 substituted “July 3, 2010” for “April 30, 2010”.

Pub. L. 111-153 substituted “April 30, 2010” for “March 31, 2010”.

2009—Subsec. (d)(1)(A)(ii). Pub. L. 111-116 substituted “March 31, 2010” for “December 31, 2009”.

Pub. L. 111-69 substituted “December 31, 2009” for “September 30, 2009”.

Pub. L. 111-12 substituted “September 30, 2009” for “March 31, 2009”.

2008—Subsec. (d)(1)(A)(ii). Pub. L. 110-330 substituted “March 31, 2009” for “September 30, 2008”.

Pub. L. 110-253 substituted “September 30, 2008” for “June 30, 2008”.

Pub. L. 110-190 substituted “June 30, 2008” for “February 29, 2008”.

2007—Subsec. (d)(1)(A)(ii). Pub. L. 110-161 substituted “February 29, 2008” for “September 30, 2007”.

1997—Subsec. (d). Pub. L. 105-2 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The tax imposed by subsection (a) shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997.”

Subsec. (d)(1)(A)(ii). Pub. L. 105-34 substituted “September 30, 2007” for “September 30, 1997”.

1996—Subsec. (d). Pub. L. 104-188 substituted “January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997” for “January 1, 1996”.

1990—Subsec. (a). Pub. L. 101-508, §11213(a)(2), substituted “6.25 percent” for “5 percent”.

Subsec. (d). Pub. L. 101-508, §11213(d)(1), substituted “January 1, 1996” for “January 1, 1991”.

1987—Subsec. (d). Pub. L. 100-223 substituted “1991” for “1988”.

1982—Subsec. (d). Pub. L. 97-248 substituted provision that the tax imposed by subsec. (a) shall apply with respect to transportation beginning after Aug. 31, 1982, and before Jan. 1, 1988, for provision that effective with respect to transportation beginning after Sept. 30, 1980, the tax imposed by subsec. (a) would not apply.

1980—Subsec. (d). Pub. L. 96-298 substituted “September 30, 1980” for “June 30, 1980”.

1976—Subsec. (a). Pub. L. 94-455 struck out “which begins after June 30, 1970” after “of property”.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-95 effective Feb. 18, 2012, see section 1101(c) of Pub. L. 112-95, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

Amendment by Pub. L. 112-91 effective Feb. 1, 2012, see section 2(c) of Pub. L. 112-91, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-30 effective Sept. 17, 2011, see section 202(c) of Pub. L. 112-30, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-27 effective July 23, 2011, see section 2(c) of Pub. L. 112-27, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-21 effective July 1, 2011, see section 2(c) of Pub. L. 112-21, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-16 effective June 1, 2011, see section 2(c) of Pub. L. 112-16, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112-7 effective Apr. 1, 2011, see section 2(c) of Pub. L. 112-7, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-329 effective Jan. 1, 2011, see section 2(c) of Pub. L. 111-329, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-249 effective Oct. 1, 2010, see section 2(c) of Pub. L. 111-249, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-216 effective Aug. 2, 2010, see section 101(c) of Pub. L. 111-216, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-197 effective July 4, 2010, see section 2(c) of Pub. L. 111-197, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-161 effective May 1, 2010, see section 2(c) of Pub. L. 111-161, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-153 effective Apr. 1, 2010, see section 2(c) of Pub. L. 111-153, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-116 effective Jan. 1, 2010, see section 2(c) of Pub. L. 111-116, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-69 effective Oct. 1, 2009, see section 2(c) of Pub. L. 111-69, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111-12 effective Apr. 1, 2009, see section 2(c) of Pub. L. 111-12, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-330 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110-330, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110-253 effective July 1, 2008, see section 2(c) of Pub. L. 110-253, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110-190 effective Mar. 1, 2008, see section 2(c) of Pub. L. 110-190, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110-161, set out as a note under section 4081 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105-34 applicable to transportation beginning on or after Oct. 1, 1997, see section 1031(e)(2) of Pub. L. 105-34, set out as a note under section 4261 of this title.

Amendment by Pub. L. 105-2 applicable to transportation beginning on or after the 7th day after Feb. 28, 1997, with special rule for applicability to amounts paid before such 7th day, see section 2(e)(2) of Pub. L. 105-2, set out as a note under section 4261 of this title.



## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective on 7th calendar day after Aug. 20, 1996, but not applicable to any amount paid before such date, see section 1609(i) of Pub. L. 104-188, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11213(a)(2) of Pub. L. 101-508 applicable to transportation beginning after Nov. 30, 1990, but inapplicable to amounts paid on or before such date, see section 11213(a)(3) of Pub. L. 101-508, set out as a note under section 4261 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97-248, set out as a note under section 4261 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

## EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as an Effective Date of 1970 Amendment note under section 4041 of this title.

## DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposits of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105-34, set out as a note under section 6302 of this title.

**§ 4272. Definition of taxable transportation, etc.****(a) In general**

For purposes of this part, except as provided in subsection (b), the term “taxable transportation” means transportation by air which begins and ends in the United States.

**(b) Exceptions**

For purposes of this part, the term “taxable transportation” does not include—

- (1) that portion of any transportation which meets the requirements of paragraphs (1), (2), (3), and (4) of section 4262(b), or
- (2) under regulations prescribed by the Secretary, transportation of property in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

**(c) Excess baggage of passengers**

For purposes of this part, the term “property” does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

**(d) Transportation**

For purposes of this part, the term “transportation” includes layover or waiting time and movement of the aircraft in deadhead service.

(Added Pub. L. 91-258, title II, § 204, May 21, 1970, 84 Stat. 240; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

## PRIOR PROVISIONS

Prior sections 4272 and 4273 were repealed by Pub. L. 85-475, § 4(a), June 30, 1958, 72 Stat. 260. For effective

date of repeal, see section 4(c) of Pub. L. 85-475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

Section 4272, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to exemptions from tax for the transportation of property.

Section 4273, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to registration in connection with the tax for the transportation of property.

## AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR**

Sec. 4281.	Small aircraft on nonestablished lines.
4282.	Transportation by air for other members of affiliated group.
[4283.	Repealed.]

## AMENDMENTS

1990—Pub. L. 101-508, title XI, § 11213(e)(2), Nov. 5, 1990, 104 Stat. 1388-436, struck out item 4283 “Reduction in aviation-related taxes in certain cases”.

1987—Pub. L. 100-223, title IV, § 405(c), Dec. 30, 1987, 101 Stat. 1535, added item 4283.

1970—Pub. L. 91-258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241, inserted “PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR.”

**§ 4281. Small aircraft on nonestablished lines****(a) In general**

The taxes imposed by sections 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line or when such aircraft is a jet aircraft.

**(b) Maximum certificated takeoff weight**

For purposes of this section, the term “maximum certificated takeoff weight” means the maximum such weight contained in the type certificate or airworthiness certificate.

**(c) Sightseeing**

For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.

**(d) Jet aircraft**

For purposes of this section, the term “jet aircraft” shall not include any aircraft which is a rotorcraft or propeller aircraft.

(Added Pub. L. 91-258, title II, § 205(a)(1), May 21, 1970, 84 Stat. 241; amended Pub. L. 97-248, title II, § 280(c)(2)(B), Sept. 3, 1982, 96 Stat. 564; Pub. L. 109-59, title XI, § 11124(a), Aug. 10, 2005, 119 Stat. 1952; Pub. L. 112-95, title XI, § 1107(a), Feb. 14, 2012, 126 Stat. 154; Pub. L. 113-295, div. A, title II, § 204(a), Dec. 19, 2014, 128 Stat. 4025.)

## PRIOR PROVISIONS

A prior section 4281, act Aug. 16, 1954, ch. 736, 68A Stat. 508, related to tax on transportation of oil by pipeline, prior to repeal by Pub. L. 85-475, § 4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85-475, set out as an Effective

Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

2014—Pub. L. 113-295 amended section generally. Prior to amendment, text read as follows: “The taxes imposed by sections 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line or when such aircraft is a jet aircraft. For purposes of the preceding sentence, the term ‘maximum certificated takeoff weight’ means the maximum such weight contained in the type certificate or airworthiness certificate. For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.”

2012—Pub. L. 112-95 inserted “or when such aircraft is a jet aircraft” after “an established line” in first sentence.

2005—Pub. L. 109-59 inserted at end “For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.”

1982—Pub. L. 97-248 struck out “(as defined in section 4492(b))” after “certificated takeoff weight”, and inserted provision defining “maximum certificated takeoff weight”.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title II, §204(b), Dec. 19, 2014, 128 Stat. 4025, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in section 1107 of the FAA Modernization and Reform Act of 2012 [Pub. L. 112-95].”

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-95, title XI, §1107(b), Feb. 14, 2012, 126 Stat. 154, provided that: “The amendment made by this section [amending this section] shall apply to taxable transportation provided after March 31, 2012.”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, §11124(b), Aug. 10, 2005, 119 Stat. 1953, provided that: “The amendment made by this section [amending this section] shall apply with respect to transportation beginning after September 30, 2005, but shall not apply to any amount paid before such date for such transportation.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97-248, set out as a note under section 4261 of this title.

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as an Effective Date of 1970 Amendment note under section 4041 of this title.

**§ 4282. Transportation by air for other members of affiliated group**

**(a) General rule**

Under regulations prescribed by the Secretary, if—

- (1) one member of an affiliated group is the owner or lessee of an aircraft, and
- (2) such aircraft is not available for hire by persons who are not members of such group,

no tax shall be imposed under section 4261 or 4271 upon any payment received by one member of the affiliated group from another member of

such group for services furnished to such other member in connection with the use of such aircraft.

**(b) Availability for hire**

For purposes of subsection (a), the determination of whether an aircraft is available for hire by persons who are not members of an affiliated group shall be made on a flight-by-flight basis.

**(c) Affiliated group**

For purposes of subsection (a), the term “affiliated group” has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(Added Pub. L. 91-258, title II, §205(a)(1), May 21, 1970, 84 Stat. 241; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 104-188, title I, §1609(f), Aug. 20, 1996, 110 Stat. 1842.)

PRIOR PROVISIONS

A prior section 4282, act Aug. 16, 1954, ch. 736, 68A Stat. 508, defined “fair charge” in connection with tax on transportation of oil by pipeline, prior to repeal by Pub. L. 85-475, §4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85-475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104-188 added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104-188, set out as a note under section 4041 of this title.

**[§ 4283. Repealed. Pub. L. 101-508, title XI, § 11213(e)(1), Nov. 5, 1990, 104 Stat. 1388-436]**

Section, added Pub. L. 100-223, title IV, §405(a), Dec. 30, 1987, 101 Stat. 1533; amended Pub. L. 101-239, title VII, §7501(a)-(b)(2), Dec. 19, 1989, 103 Stat. 2361, provided for reduction in aviation-related taxes in certain cases.

**[Subchapter D—Repealed]**

**[§§ 4286, 4287. Repealed. Pub. L. 89-44, title III, § 304, June 21, 1965, 79 Stat. 148]**

Section 4286, act Aug. 16, 1954, ch. 736, 68A Stat. 510, imposed a tax equivalent to 10 percent of the amount collected for the use of safety deposit boxes.

Section 4287, act Aug. 16, 1954, ch. 736, 68A Stat. 510, defined safety deposit box.

EFFECTIVE DATE OF REPEAL

Pub. L. 89-44, title VII, §701(b)(4), June 21, 1965, 79 Stat. 157, provided that: “The amendments made by section 304 [repealing these sections] shall apply with respect to use periods beginning on or after July 1, 1965.”

**Subchapter E—Special Provisions Applicable to Services and Facilities Taxes**

Sec. 4291.	Cases where persons receiving payment must collect tax.
[4292.	Repealed.]

Sec.  
4293. Exemption for United States and possessions.  
[4294, 4295. Repealed.]

## AMENDMENTS

1976—Pub. L. 94-455, title XIX, §1904(b)(4), Oct. 4, 1976, 90 Stat. 1815, struck out items 4292, 4294, and 4295 relating to State and local governmental exemption, exemption for nonprofit educational organizations, and cross reference to general administrative provisions, respectively.

1958—Pub. L. 85-859, title I, §135(b), Sept. 2, 1958, 72 Stat. 1292, added item 4294 and redesignated former item 4294 as 4295.

**§ 4291. Cases where persons receiving payment must collect tax**

Except as otherwise provided in section 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under this chapter shall collect the amount of the tax from the person making such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 511; July 25, 1956, ch. 725, §4(c), 70 Stat. 646; Pub. L. 85-859, title I, §131(g), Sept. 2, 1958, 72 Stat. 1287; Pub. L. 89-44, title III, §305(a), June 21, 1965, 79 Stat. 148; Pub. L. 91-258, title II, §205(c)(3), May 21, 1970, 84 Stat. 242.)

## AMENDMENTS

1970—Pub. L. 91-258 substituted “section 4263(a)” for “section 4264(a)”.

1965—Pub. L. 89-44 struck out reference to section 4231 and struck out sentence referring to tax imposed on life memberships by section 4241.

1958—Pub. L. 85-859 substituted “Except as otherwise provided in sections 3241 and 4262(a)” for “Except as provided in section 4264(a)”.

1956—Act July 25, 1956, inserted “Except as provided in section 4264(a)”, and struck out provisions which related to collection of tax where payment specified in section 4261 was made outside the United States for a prepaid order, exchange order, or similar order.

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective on July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

## EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VII, §701(b)(1), June 21, 1965, 79 Stat. 156, provided that:

“(A) The amendments made by sections 301 and 305 [repealing sections 4231 to 4234 and 4241 to 4243 of this title and amending this section and section 6040 of this title] insofar as they relate to the taxes imposed by section 4231 of the Code, shall apply with respect to admissions, services, or uses after noon, December 31, 1965.

“(B) The amendments made by sections 301 and 305 insofar as they relate to the taxes imposed by section 4241 of the Code, shall apply with respect to—

“(i) dues and membership fees attributable to periods beginning on or after January 1, 1966;

“(ii) initiation fees (other than initiation fees to which clause (iii) applies) and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966;

“(iii) initiation fees paid on or after July 1, 1965, to a new club or organization which first makes its facilities available to members on or after such date; and

“(iv) in the case of amounts described in section 4243(b) of the Code, 3-year periods beginning on or after January 1, 1966.”

## EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

## EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 25, 1956, applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

**[§ 4292. Repealed. Pub. L. 94-455, title XIX, § 1904(a)(9), Oct. 4, 1976, 90 Stat. 1812]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 511; June 30, 1958, Pub. L. 85-475, §4(b)(3), 72 Stat. 260; May 21, 1970, Pub. L. 91-258, title II, §205(a)(2), 84 Stat. 241, provided tax exemption for any payment received for services or facilities furnished to any State, Territory, or political subdivision of such, or the District of Columbia.

## EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

**§ 4293. Exemption for United States and possessions**

The Secretary of the Treasury may authorize exemption from the taxes imposed by section 4041, section 4051, chapter 32 (other than the taxes imposed by sections 4064 and 4121) and subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 511; Pub. L. 91-258, title II, §205(a)(3), May 21, 1970, 84 Stat. 241; Pub. L. 94-455, title XIX, §1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-227, §2(b)(3), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95-502, title II, §202(b), Oct. 21, 1978, 92 Stat. 1697; Pub. L. 95-618, title II, §201(c)(2), Nov. 9, 1978, 92 Stat. 3184; Pub. L. 100-647, title VI, §6103(a), Nov. 10, 1988, 102 Stat. 3711; Pub. L. 101-508, title XI, §11221(c), Nov. 5, 1990, 104 Stat. 1388-444; Pub. L. 113-295, div. A, title II, §221(a)(103)(B)(iii), Dec. 19, 2014, 128 Stat. 4053.)

## AMENDMENTS

2014—Pub. L. 113-295 struck out “subchapter A of chapter 31,” after “imposed by”.

1990—Pub. L. 101-508 inserted “subchapter A of chapter 31,” before “section 4041”.

1988—Pub. L. 100-647 inserted reference to section 4051 of this title.

1978—Pub. L. 95-618 substituted “taxes imposed by sections 4064 and 4121” for “tax imposed by section 4121”.

Pub. L. 95-502 substituted “section 4041, chapter 32” for “chapters 31 and 32”.

Pub. L. 95-227 inserted “(other than the tax imposed by section 4121)” after “chapters 31 and 32”.

1976—Pub. L. 94-455 substituted “Secretary of the Treasury” for “Secretary” after “The”.

1970—Pub. L. 91-258 substituted “subchapter B” for “subchapters B and C”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Jan. 1, 1991, with exception for contracts binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101-508, set out as a note under section 4221 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6103(b), Nov. 10, 1988, 102 Stat. 3711, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Amendment by Pub. L. 95-502 effective Oct. 1, 1980, see section 202(d) of Pub. L. 95-502, set out as an Effective Date note under section 4042 of this title.

Amendment by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note under section 4121 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub. L. 94-455, set out as a note under section 6013 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 effective July 1, 1970, see section 211(a) of Pub. L. 91-258, set out as a note under section 4041 of this title.

### [§§ 4294, 4295. Repealed. Pub. L. 94-455, title XIX, § 1904(a)(10), (11), Oct. 4, 1976, 90 Stat. 1812]

Section 4294, added Pub. L. 85-859, title I, §135(a), Sept. 2, 1958, 72 Stat. 1292; amended Pub. L. 86-344, §2(d), Sept. 21, 1959, 73 Stat. 618; Pub. L. 91-72, title I, §101(j)(28), Dec. 30, 1969, 83 Stat. 529; Pub. L. 91-258, title II, §205(a)(4), May 21, 1970, 84 Stat. 241, provided an exemption from tax for services and facilities furnished to a nonprofit educational organization and defined “nonprofit educational organization”.

Section 4295, act Aug. 16, 1954, ch. 736, 68A Stat. 511, §4295, formerly §4294, renumbered Sept. 2, 1958, Pub. L. 85-859, title I, §135(a), 72 Stat. 1292, related to a cross reference to general administrative provisions.

#### EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

## CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

Subchapter	Sec. <sup>1</sup>
A. Policies issued by foreign insurers .....	4371
B. Insured and self-insured health plans ....	4375

<sup>1</sup> Section numbers editorially supplied.

#### PRIOR PROVISIONS

The provisions of a prior chapter 34, Documentary Stamp Taxes, were set out as:

Subchapter A, Issuance of capital stock and certificates of indebtedness by a corporation, comprising sections 4301 to 4305 and 4311 to 4316.

Subchapter B, Sale or transfers of capital stock and certificates of indebtedness of a corporation, comprising sections 4321 to 4324, 4331 to 4333, 4341 to 4345, and 4351 to 4354.

Subchapter C, Conveyances, comprising sections 4361 to 4363.

Subchapter D, Policies issued by foreign insurers, comprising sections 4371 to 4375.

Subchapter E, Miscellaneous provisions applicable to documentary stamp taxes, comprising sections 4381 to 4384.

Subchapters A and B were repealed by Pub. L. 89-44, title IV, §401(a), June 21, 1965, 79 Stat. 148.

Subchapter C was struck out by Pub. L. 94-455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.

Subchapter D heading was struck out, sections 4371 to 4373 were reenacted without change, section 4374, “liability for tax”, was substituted for section 4374, “payment of tax”, and section 4375 was struck out by Pub. L. 94-455, title XIX, §1904(a)(12).

Subchapter E, section 4381 was repealed by Pub. L. 89-44, title IV, §401(c), June 21, 1965, 79 Stat. 148, and sections 4382 to 4384 were struck out by Pub. L. 94-455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.

The subject matter of the prior sections was as follows:

A prior section 4301, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1293; Apr. 8, 1960, Pub. L. 86-416, §1, 74 Stat. 36, imposed a tax, based upon the actual value of the certificates or shares, upon each original issue of shares or certificates of stock issued by a corporation.

A prior section 4302, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1293, made provision for a determination of tax in the case of recapitalization.

A prior section 4303, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1293, granted exemptions for common trust funds, pooled investment funds, and installment purchases of certain shares or certificates, and directed attention to section 4382 for other exemptions.

A prior section 4304, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1294, called for the affixing of the stamps representing the tax imposed by section 4301 upon the stock books or corresponding records of the corporation.

A prior section 4305, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1294, made cross-references to sections 4381 and 4384 and subtitle F.

A prior section 4311, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1294, imposed a tax on all certificates of indebtedness issued by a corporation.

A prior section 4312, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4312, formerly §4313; renumbered §4312, Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1294, provided that every renewal of any certificate of indebtedness should be taxed as a new issue.

A prior section 4313, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4313, formerly §4314; renumbered §4313, Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1294, provided for the method of determining the rate of taxation in the case of a bond conditioned for the repayment of money and given in a penal sum greater than the debt secured.

A prior section 4314, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4314, formerly §4315; renumbered §4314, Sept. 2, 1958, Pub. L. 85-859, title I, §141(a), 72 Stat. 1294, granted an exemption to instruments under the terms of which the obligee was required to make installment

payments of not more than 20 percent annually, and made reference to section 4382 for other exemptions.

A prior section 4315, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, § 4315, formerly § 4316; renumbered § 4315 and amended Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1294, made cross references to sections 4381 and 4384 and subtitle F.

A prior section 4321, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1295; Sept. 21, 1959, Pub. L. 86-344, § 5(a), 73 Stat. 619, imposed a tax upon the sale or transfer of shares or certificates of stock or of rights to subscribe to receive such shares or certificates issued by a corporation.

A prior section 4322, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1295, granted exemptions in the case of sales by brokers or registered nominees and in the case of odd lot sales.

A prior section 4323, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1296; Sept. 21, 1959, Pub. L. 86-344, § 5(b), 73 Stat. 619, called for the affixing of the stamps representing the tax upon the books of the corporation and the certification of the actual value of the shares transferred, and made reference to section 4352 in the case of transfers shown otherwise than by the books of the corporation.

A prior section 4324, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

A prior section 4331, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1296, imposed a tax upon each sale or transfer of any certificate of indebtedness issued by a corporation.

A prior section 4332, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Jan. 28, 1956, ch. 19, 70 Stat. 9; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1296, granted exemptions in the case of transfers and sales by brokers and installment purchases of obligations and made reference to other exemptions listed in other sections.

A prior section 4333, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

A prior section 4341, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1297, granted an exemption from the imposition of the tax under sections 4321 and 4331 in the case of transfers as collateral security and as security for performance.

A prior section 4342, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1297, granted exemptions in the case of delivery or transfer of instruments by a fiduciary to his nominee or between nominees or by a custodian.

A prior section 4343, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1297, provided that taxes imposed by sections 4321 and 4331 would not apply in specified cases involving decedents, minors, incompetents, financial institutions, bankrupts, successors, foreign governments and aliens, trustees, and survivors.

A prior section 4344, Pub. L. 85-859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1298, made provision for an exemption from tax in the case of specified loan transactions, worthless stock and obligations, and transfers between certain revocable trusts.

A prior section 4345, acts Aug. 16, 1954, ch. 736, 68A Stat. 518, § 4345, formerly § 4344; renumbered § 4345 and amended Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1298, required an exemption certificate setting forth the facts as prescribed by regulations.

A prior section 4346, acts Aug. 16, 1954, ch. 736, 68A Stat. 518, § 4346, formerly § 4345; renumbered § 4346, Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1298, made cross reference to other sections for additional exemptions.

A prior section 4351, acts Aug. 16, 1954, ch. 736, 68A Stat. 518; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1299, defined registered nominee and sale or transfer.

A prior section 4352, acts Aug. 16, 1954, ch. 736, 68A Stat. 519, § 4352, formerly § 4353; renumbered § 4352, Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1299, provided for the affixing of the stamps required either on the instrument itself or on the memorandum or bill of sale.

A prior section 4353, Pub. L. 85-859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1299, made provision for the payment of tax through the national securities exchanges without the use of stamps.

A prior section 4354, acts Aug. 16, 1954, ch. 736, 68A Stat. 519; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1299, made cross references to section 4384 and subtitle F for penalties and other general and administrative provisions.

A prior section 4361, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1299; June 21, 1965, Pub. L. 89-44, title IV, § 401(b), 79 Stat. 148, related to the imposition of a tax on each deed, instrument, or writing by which any realty is sold, assigned, transferred, or otherwise conveyed.

A prior section 4362, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1300, related to exemptions to the tax imposed by former section 4361.

A prior section 4363, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1300, related to cross references to former section 4384 and subtitle F of this title.

A prior section 4375, acts Aug. 16, 1954, ch. 736, 68A Stat. 522; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1301, made cross-references to section 4384 and subtitle F.

A prior section 4381, acts Aug. 16, 1954, ch. 736, 68A Stat. 523, Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1302, defined certificates of indebtedness, corporation, and shares or certificates of stock.

A prior section 4382, acts Aug. 16, 1954, ch. 736, 68A Stat. 523; Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1302; Oct. 16, 1962, Pub. L. 87-834, § 6(e)(2), 76 Stat. 984, granted exemptions to Government and state obligations, etc.

A prior section 4383, Pub. L. 85-859, title I, § 141(a), Sept. 2, 1958, 72 Stat. 1303, related to the taxation of continuing and terminated partnerships.

A prior section 4384, acts Aug. 16, 1954, ch. 736, 68A Stat. 524, § 4384, formerly § 4383; renumbered § 4384 and amended Sept. 2, 1958, Pub. L. 85-859, title I, § 141(a), 72 Stat. 1303, related to liability for the tax.

#### AMENDMENTS

2010—Pub. L. 111-148, title VI, § 6301(e)(2)(B)(i), Mar. 23, 2010, 124 Stat. 746, substituted “TAXES ON CERTAIN INSURANCE POLICIES” for “POLICIES ISSUED BY FOREIGN INSURERS” as chapter heading and added items relating to subchapters A and B.

1976—Pub. L. 94-455, title XIX, § 1904(a)(12), Oct. 4, 1976, 90 Stat. 1812, substituted “POLICIES ISSUED BY FOREIGN INSURERS” for “DOCUMENTARY STAMP TAXES” as chapter heading and struck out items relating to subchapters C to E.

1965—Pub. L. 89-44, title IV, § 401(a), June 21, 1965, 79 Stat. 148, struck out items relating to subchapters A and B.

#### EFFECTIVE DATES OF REPEAL

Pub. L. 89-44, title VII, § 701(c)(1), June 21, 1965, 79 Stat. 157, provided that: “The amendments made by section 401 [repealing sections 4301 to 4305, 4311 to 4315, 4321 to 4324, 4331 to 4333, 4341 to 4346, 4351 to 4354 and 4381 of this title] (relating to documentary stamp taxes) shall apply on and after January 1, 1966.”

Repeal of sections 4361 to 4363, 4375, 4382 to 4384 by section 1904(a)(12) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after

Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

### Subchapter A—Policies Issued By Foreign Insurers

Sec.	
4371.	Imposition of tax.
4372.	Definitions.
4373.	Exemptions.
4374.	Liability for tax.

#### AMENDMENTS

2010—Pub. L. 111-148, title VI, §6301(e)(2)(B)(i), Mar. 23, 2010, 124 Stat. 746, added subchapter heading.

#### § 4371. Imposition of tax

There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

##### (1) Casualty insurance and indemnity bonds

4 cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d);

##### (2) Life insurance, sickness, and accident policies, and annuity contracts

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract; and

##### (3) Reinsurance

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 521; Mar. 13, 1956, ch. 83, §5(9), 70 Stat. 49; Pub. L. 85-859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1300; Pub. L. 86-69, §3(f)(3), June 25, 1959, 73 Stat. 140; Pub. L. 89-44, title VIII, §804(b), June 21, 1965, 79 Stat. 160; Pub. L. 94-455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 98-369, div. A, title II, §211(b)(23), July 18, 1984, 98 Stat. 757; Pub. L. 100-203, title X, §10242(c)(3), Dec. 22, 1987, 101 Stat. 1330-423; Pub. L. 101-239, title VII, §7811(i)(11), Dec. 19, 1989, 103 Stat. 2411.)

#### CONSTITUTIONALITY

For information regarding constitutionality of section 4371 of act Aug. 16, 1954, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, *Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States*.

#### AMENDMENTS

1989—Par. (2). Pub. L. 101-239 struck out “, unless the insurer is subject to tax under section 842(b)” after “or annuity contract”.

1987—Par. (2). Pub. L. 100-203 substituted “section 842(b)” for “section 813”.

1984—Par. (2). Pub. L. 98-369 substituted “section 813” for “section 819”.

1976—Pub. L. 94-455 substituted in par. (1) “4 cents” for “four cents” and “premium paid” for “premium charged”, in pars. (2) and (3) “1 cent” for “one cent” and “premium paid” for “premium charged”, and struck out provision following par. (3) relating to com-

putation of tax on premium paid in lieu of premium charged.

1965—Pub. L. 89-44 inserted last sentence relating to computation of tax on premium paid in lieu of premium charged.

1959—Par. (2). Pub. L. 86-69 substituted “section 819” for “section 816”.

1958—Pub. L. 85-859 substituted “is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax” for “shall be imposed a tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer”.

1956—Par. (2). Act Mar. 13, 1956, substituted “section 816” for “section 807”.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100-203, set out as a note under section 816 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable with respect to policies, bonds, and contracts with respect to which the tax imposed by this section is required to be paid on the basis of a return, see section 804(c) of Pub. L. 89-44, set out as a note under section 4374 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as an Effective Date note under section 381 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

#### § 4372. Definitions

##### (a) Foreign insurer or reinsurer

For purposes of section 4371, the term “foreign insurer or reinsurer” means an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation

which shall become bound by an obligation of the nature of an indemnity bond. The term does not include a foreign government, or municipal or other corporation exercising the taxing power.

**(b) Policy of casualty insurance**

For purposes of section 4371(1), the term “policy of casualty insurance” means any policy (other than life) or other instrument by whatever name called whereby a contract of insurance is made, continued, or renewed.

**(c) Indemnity bond**

For purposes of this chapter, the term “indemnity bond” means any instrument by whatever name called whereby an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed. The term includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

**(d) Insured**

For purposes of section 4371(1), the term “insured” means—

(1) a domestic corporation or partnership, or an individual resident of the United States, against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

(2) a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, against, or with respect to, hazards, risks, losses, or liabilities within the United States.

**(e) Policy of life, sickness, or accident insurance, or annuity contract**

For the purpose of section 4371(2), the term “policy of life, sickness, or accident insurance, or annuity contract” means any policy or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed with respect to the life or hazards to the person of a citizen or resident of the United States.

**(f) Policy of reinsurance**

For the purpose of section 4371(3), the term “policy of reinsurance” means any policy or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371.

(Aug. 16, 1954, ch. 736, 68A Stat. 521; Pub. L. 85-859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1300; Pub. L. 94-455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455 substituted “section 4371” for “this subchapter”, and inserted provision that term does not include a foreign government, or municipal or other corporation exercising the taxing power.

Subsec. (c). Pub. L. 94-455 substituted “this chapter” for “this subchapter”.

1958—Subsec. (d)(2). Pub. L. 85-859 substituted “against, or with respect to, hazards, risks, losses, or liabilities” for “with respect to hazards, risks, or liabilities”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85-859, Sept. 2, 1958, 72 Stat. 1275.

**§ 4373. Exemptions**

The tax imposed by section 4371 shall not apply to—

**(1) Effectively connected items**

Any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) pursuant to a treaty obligation of the United States.

**(2) Indemnity bond**

Any indemnity bond required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-saving certificate, warrant or check, issued by the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Pub. L. 85-859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1301; Pub. L. 94-455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1813; Pub. L. 100-647, title I, §1012(q)(13)(A), Nov. 10, 1988, 102 Stat. 3525.)

AMENDMENTS

1988—Par. (1). Pub. L. 100-647 amended par. (1) generally, substituting provisions relating to effectively connected items for provisions relating to domestic agent.

1976—Par. (1). Pub. L. 94-455 substituted “State, or in the District of Columbia, within” for “State, Territory, or District of the United States within”.

1958—Pub. L. 85-859 reenacted section without change.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(q)(13)(B), Nov. 10, 1988, 102 Stat. 3525, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply with respect to premiums paid after the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

**§ 4374. Liability for tax**

The tax imposed by this chapter shall be paid, on the basis of a return, by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency

or instrumentality thereof shall not be liable for the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Pub. L. 85-859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1301; Pub. L. 89-44, title VIII, §804(a)(1), (2), June 21, 1965, 79 Stat. 160; Pub. L. 94-455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1813.)

#### PRIOR PROVISIONS

For provisions of prior sections 4375, 4381 to 4384, see Prior Provisions note preceding section 4371 of this title.

#### AMENDMENTS

1976—Pub. L. 94-455 substituted in section catchline “Liability for tax” for “Payment of tax” and in text provisions relating to payment of tax on basis of a return and to tax-exempt status of United States and its agencies and instrumentalities for provisions relating to placing of stamps on any policy, indemnity bond, or annuity contract referred to in section 4371 and to regulation by Secretary that tax be paid on basis of a return.

1965—Pub. L. 89-44 substituted “Payment of tax” for “Affixing of stamps” in section catchline, and inserted sentence authorizing Secretary or his delegate to provide by regulation for payment on basis of a return of tax imposed by section 4371.

1958—Pub. L. 85-859 reenacted section without change.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, §804(c), June 21, 1965, 79 Stat. 160, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1965. The amendments made by subsection (b) [amending section 4371 of this title] shall apply with respect to policies, bonds, and contracts with respect to which the tax imposed by section 4371 of the Code is required to be paid on the basis of a return.”

#### DETERMINATION OF PARTNERSHIP AS CONTINUING OR TERMINATED PARTNERSHIP

Pub. L. 85-859, title I, §141(b), Sept. 2, 1958, 72 Stat. 1304, mandated that only changes in the partnership occurring on or after the effective date specified in section 1(c) of Pub. L. 85-859 shall be taken into account in the determination of whether a partnership is a continuing or terminated one.

### Subchapter B—Insured and Self-Insured Health Plans

Sec.	
4375.	Health insurance.
4376.	Self-insured health plans.
4377.	Definitions and special rules.

## § 4375. Health insurance

### (a) Imposition of fee

There is hereby imposed on each specified health insurance policy for each policy year ending after September 30, 2012, a fee equal to the product of \$2 (\$1 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy.

### (b) Liability for fee

The fee imposed by subsection (a) shall be paid by the issuer of the policy.

### (c) Specified health insurance policy

For purposes of this section:

#### (1) In general

Except as otherwise provided in this section, the term “specified health insurance policy” means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States.

#### (2) Exemption for certain policies

The term “specified health insurance policy” does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

### (3) Treatment of prepaid health coverage arrangements

#### (A) In general

In the case of any arrangement described in subparagraph (B), such arrangement shall be treated as a specified health insurance policy, and the person referred to in such subparagraph shall be treated as the issuer.

#### (B) Description of arrangements

An arrangement is described in this subparagraph if under such arrangement fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided.

### (d) Adjustments for increases in health care spending

In the case of any policy year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such policy year shall be equal to the sum of such dollar amount for policy years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for policy years ending in the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

### (e) Termination

This section shall not apply to policy years ending after September 30, 2019.

(Added Pub. L. 111-148, title VI, §6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 743.)

## § 4376. Self-insured health plans

### (a) Imposition of fee

In the case of any applicable self-insured health plan for each plan year ending after September 30, 2012, there is hereby imposed a fee equal to \$2 (\$1 in the case of plan years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan.

### (b) Liability for fee

#### (1) In general

The fee imposed by subsection (a) shall be paid by the plan sponsor.



**(2) Plan sponsor**

For purposes of paragraph (1) the term “plan sponsor” means—

(A) the employer in the case of a plan established or maintained by a single employer,

(B) the employee organization in the case of a plan established or maintained by an employee organization,

(C) in the case of—

(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

(ii) a multiple employer welfare arrangement, or

(iii) a voluntary employees’ beneficiary association described in section 501(c)(9), the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

**(c) Applicable self-insured health plan**

For purposes of this section, the term “applicable self-insured health plan” means any plan for providing accident or health coverage if—

(1) any portion of such coverage is provided other than through an insurance policy, and

(2) such plan is established or maintained—

(A) by 1 or more employers for the benefit of their employees or former employees,

(B) by 1 or more employee organizations for the benefit of their members or former members,

(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

(D) by a voluntary employees’ beneficiary association described in section 501(c)(9),

(E) by any organization described in section 501(c)(6), or

(F) in the case of a plan not described in the preceding subparagraphs, by a multiple employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

**(d) Adjustments for increases in health care spending**

In the case of any plan year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such plan year shall be equal to the sum of such dollar amount for plan years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for plan years ending in the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

**(e) Termination**

This section shall not apply to plan years ending after September 30, 2019.

(Added Pub. L. 111-148, title VI, § 6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 744.)

## REFERENCES IN TEXT

Section 3(40) of Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(2)(F), is classified to section 1002(40) of Title 29, Labor.

**§ 4377. Definitions and special rules****(a) Definitions**

For purposes of this subchapter—

**(1) Accident and health coverage**

The term “accident and health coverage” means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

**(2) Insurance policy**

The term “insurance policy” means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

**(3) United States**

The term “United States” includes any possession of the United States.

**(b) Treatment of governmental entities****(1) In general**

For purposes of this subchapter—

(A) the term “person” includes any governmental entity, and

(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the fees imposed by this subchapter except as provided in paragraph (2).

**(2) Treatment of exempt governmental programs**

In the case of an exempt governmental program, no fee shall be imposed under section 4375 or section 4376 on any covered life under such program.

**(3) Exempt governmental program defined**

For purposes of this subchapter, the term “exempt governmental program” means—

(A) any insurance program established under title XVIII of the Social Security Act,

(B) the medical assistance program established by title XIX or XXI of the Social Security Act,

(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being members of the Armed Forces of the United States or veterans, and

(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

**(c) Treatment as tax**

For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

**(d) No cover over to possessions**

Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.

(Added Pub. L. 111-148, title VI, §6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 746.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4(d) of the Indian Health Care Improvement Act, referred to in subsec. (b)(3)(D), is classified to section 1603(d) of Title 25, Indians.

**CHAPTER 35—TAXES ON WAGERING**

Subchapter	Sec. <sup>1</sup>
A. Tax on wagers .....	4401
B. Occupational tax .....	4411
C. Miscellaneous provisions .....	4421

**Subchapter A—Tax on Wagers**

Sec.	
4401.	Imposition of tax.
4402.	Exemptions.
4403.	Record requirements.
4404.	Territorial extent.
4405.	Cross references.

**§ 4401. Imposition of tax**

**(a) Wagers**

**(1) State authorized wagers**

There shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager.

**(2) Unauthorized wagers**

There shall be imposed on any wager not described in paragraph (1) an excise tax equal to 2 percent of the amount of such wager.

**(b) Amount of wager**

In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

**(c) Persons liable for tax**

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another per-

son without having registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Pub. L. 85-859, title I, §151(a), Sept. 2, 1958, 72 Stat. 1304; Pub. L. 93-499, §3(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-362, title I, §109(a), Oct. 25, 1982, 96 Stat. 1731.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-362 substituted provision that there shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager and that there shall be imposed on any other wager an excise tax equal to 2 percent of the amount of such wager for provision that there be imposed on wagers, as defined in section 4421, an excise tax equal to 2 percent of the amount thereof.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1974—Subsec. (a). Pub. L. 93-499 substituted “2 percent” for “10 percent”.

1958—Subsec. (c). Pub. L. 85-859 made all persons required to register under section 4412 of this title who receive wagers for or on behalf of another person without having registered under section 4412 of this title the name and place of residence of such other person liable for the tax on all such wagers received by them.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-362, title I, §109(c)(1), Oct. 25, 1982, 96 Stat. 1731, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1983.”

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-499, §3(d)(1), Oct. 29, 1974, 88 Stat. 1551, provided that: “The amendments made by this section [enacting section 4424 and amending this section and section 4411 of this title] take effect on December 1, 1974, and shall apply only with respect to wagers placed on or after such date.”

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-859, title I, §151(b), Sept. 2, 1958, 72 Stat. 1304, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to wagers received after the date of the enactment of this Act [Sept. 2, 1958].”

**§ 4402. Exemptions**

No tax shall be imposed by this subchapter—

**(1) Parimutuels**

On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

**(2) Coin-operated devices**

On any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2) (as so in effect), or

**(3) State-conducted lotteries, etc.**

On any wager placed in a sweepstakes, wagering pool, or lottery which is conducted by an agency of a State acting under authority of

<sup>1</sup> Section numbers editorially supplied.

State law, but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Pub. L. 85-859, title I, §152(b), Sept. 2, 1958, 72 Stat. 1305; Pub. L. 89-44, title IV, §405(a), title VIII, §813(a), June 21, 1965, 79 Stat. 149, 170; Pub. L. 94-455, title XII, §1208(a), Oct. 4, 1976, 90 Stat. 1709; Pub. L. 95-600, title V, §521(c)(1), Nov. 6, 1978, 92 Stat. 2884.)

#### REFERENCES IN TEXT

Section 4462, referred to in par. (2), was repealed by Pub. L. 95-600, title V, §521(b), Nov. 6, 1978, 92 Stat. 2884.

#### AMENDMENTS

1978—Par. (2). Pub. L. 95-600 substituted “(as defined in section 4462 as in effect for years beginning before July 1, 1980)” for “with respect to which an occupational tax is imposed by section 4461” and “(as so in effect), or” for “if an occupational tax is imposed with respect to such device by section 4461, or”.

1976—Par. (3). Pub. L. 94-455, among other changes, substituted in heading “State-conducted lotteries, etc.” for “State-conducted sweepstakes.”, and struck out provision that no tax be imposed on any wager placed in a sweepstakes, wagering pool, or lottery in which the ultimate winners are determined by the results of a horse race.

1965—Par. (2). Pub. L. 89-44, §405(a), substituted “section 4462(a)(2),” for “section 4462(a)(2)(B),”.

Par. (3). Pub. L. 89-44, §813(a), added par. (3).

1958—Par. (2). Pub. L. 85-859 inserted provisions exempting from the tax amounts paid to operate a device described in section 4462(a)(2)(B), if an occupational tax is imposed with respect to such device by section 4461 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title V, §521(d)(2), Nov. 6, 1978, 92 Stat. 2885, provided that: “The amendments made by subsections (b) [repealing sections 4461 to 4464 of this title] and (c) [amending this section and section 4901 of this title] shall apply with respect to years beginning after June 30, 1980.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XII, §1208(c)(1), Oct. 4, 1976, 90 Stat. 1709, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to wagers placed after March 10, 1964”.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VII, §701(c)(2), June 21, 1965, 79 Stat. 157, provided in part that: “The amendments made by sections 403 [amending sections 4461 and 4462 of this title] (relating to occupational tax on coin-operated devices) and 404 [repealing sections 4471 to 4474] (relating to occupational tax on bowling alleys, billiard and pool tables), and by subsections (a) [amending this section], (b) [amending section 4901 of this title] and (d) [amending section 4914 of this title] of section 405 (relating to technical and conforming changes) shall apply on and after July 1, 1965.”

Pub. L. 89-44, title VIII, §813(b), June 21, 1965, 79 Stat. 170, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to wagers placed after March 10, 1964.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-859, title I, §152(c), Sept. 2, 1958, 72 Stat. 1305, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 4462 of this title] shall take effect on the effective

date specified in section 1(c) of this Act [the first day of the first calendar quarter beginning more than 60 days after Sept. 2, 1958]. In the case of the year beginning July 1, 1958, where the trade or business on which the tax is imposed under section 4461 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] was commenced before such effective date, the tax imposed for such year solely by reason of the amendment made by subsection (a)—

“(1) shall be the amount reckoned proportionately from such effective date through June 30, 1959, and

“(2) shall be due on, and payable on or before, the last day of the month the first day of which is such effective date.”

#### § 4403. Record requirements

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

#### § 4404. Territorial extent

The tax imposed by this subchapter shall apply only to wagers

- (1) accepted in the United States, or
- (2) placed by a person who is in the United States

(A) with a person who is a citizen or resident of the United States, or

(B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

#### § 4405. Cross references

**For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.**

(Aug. 16, 1954, ch. 736, 68A Stat. 526.)

#### Subchapter B—Occupational Tax

Sec.	
4411.	Imposition of tax.
4412.	Registration.
4413.	Certain provisions made applicable.
4414.	Cross references.

#### § 4411. Imposition of tax

##### (a) In general

There shall be imposed a special tax of \$500 per year to be paid by each person who is liable for the tax imposed under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

##### (b) Authorized persons

Subsection (a) shall be applied by substituting “\$50” for “\$500” in the case of—

(1) any person whose liability for tax under section 4401 is determined only under paragraph (1) of section 4401(a), and

(2) any person who is engaged in receiving wagers only for or on behalf of persons described in paragraph (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 527; Pub. L. 93-499, §3(b), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 97-362, title I, §109(b), Oct. 25, 1982, 96 Stat. 1731.)

#### CONSTITUTIONALITY

For information regarding constitutionality of section 4411 of act Aug. 16, 1954, see Congressional Re-

search Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

#### AMENDMENTS

1982—Pub. L. 97-362 designated existing provisions as subsec. (a), in subsec. (a), as so designated, substituted “liable for the tax imposed” for “liable for tax”, and added subsec. (b).

1974—Pub. L. 93-499 substituted “\$500” for “\$50”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-362, title I, §109(c)(2), Oct. 25, 1982, 96 Stat. 1731, provided that: “The amendment made by subsection (b) [amending this section] shall take effect on July 1, 1983.”

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-499 effective Dec. 1, 1974, and applicable only with respect to wagers placed on or after such date, see section 3(d)(1) of Pub. L. 93-499, set out as a note under section 4401 of this title.

#### PERSONS ENGAGED IN ACTIVITIES ON DECEMBER 1, 1974, REQUIRING PAYMENT OF TAX; PERSONS PAYING TAX AND REGISTERING BEFORE DECEMBER 1, 1974

Pub. L. 93-499, §3(d)(2), Oct. 29, 1974, 88 Stat. 1551, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) Any person who, on December 1, 1974, is engaged in an activity which makes him liable for payment of the tax imposed by section 4411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on such date) shall be treated as commencing such activity on such date for purposes of such section and section 4901 of such Code.

“(B) Any person who, before December 1, 1974.—

“(i) became liable for and paid the tax imposed by section 4411 of the Internal Revenue Code of 1986 (as in effect on July 1, 1974) for the year ending June 30, 1975, shall not be liable for any additional tax under such section for such year, and

“(ii) registered under section 4412 of such Code (as in effect on July 1, 1974) for the year ending June 30, 1975, shall not be required to reregister under such section for such year.”

### § 4412. Registration

#### (a) Requirement

Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

#### (b) Firm or company

Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

#### (c) Supplemental information

In accordance with regulations prescribed by the Secretary, the Secretary may require from

time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 527; Pub. L. 94-455, title XIX, §1906(b)(13)(I), Oct. 4, 1976, 90 Stat. 1835.)

#### CONSTITUTIONALITY

For information regarding constitutionality of section 4412 of act Aug. 16, 1954, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

#### AMENDMENTS

1976—Subsec. (c). Pub. L. 94-455 substituted “the Secretary may” for “he or his delegate may”.

#### PERSONS PAYING TAX AND REGISTERING BEFORE DECEMBER 1, 1974

Persons registered before Dec. 1, 1974 under this section (as in effect on July 1, 1974) for the year ending June 30, 1975, not required to reregister under this section for such year, see section 3(d)(2) of Pub. L. 93-499, set out as a note under section 4411 of this title.

### § 4413. Certain provisions made applicable

Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provision of sections 4901 to 4907, inclusive, shall so extend or apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

### § 4414. Cross references

**For penalties and other general and administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.**

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

### Subchapter C—Miscellaneous Provisions

#### Sec.

- |       |  |
|-------|--|
| 4421. | Definitions.                             |
| 4422. | Applicability of Federal and State laws. |
| 4423. | Inspection of books.                     |
| 4424. | Disclosure of wagering tax information.  |

#### AMENDMENTS

1974—Pub. L. 93-499, §3(c)(2), Oct. 29, 1974, 88 Stat. 1551, added item 4424.

### § 4421. Definitions

For purposes of this chapter—

#### (1) Wager

The term “wager” means—

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

**(2) Lottery**

The term “lottery” includes the numbers game, policy, and similar types of wagering. The term does not include—

- (A) any game of a type in which usually
  - (i) the wagers are placed,
  - (ii) the winners are determined, and
  - (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and

(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

**§ 4422. Applicability of Federal and State laws**

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

**§ 4423. Inspection of books**

Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

**§ 4424. Disclosure of wagering tax information****(a) General rule**

Except as otherwise provided in this section, neither the Secretary nor any other officer or employee of the Treasury Department may divulge or make known in any manner whatever to any person—

- (1) any original, copy, or abstract of any return, payment, or registration made pursuant to this chapter,
- (2) any record required for making any such return, payment, or registration, which the Secretary is permitted by the taxpayer to examine or which is produced pursuant to section 7602, or
- (3) any information come at by the exploitation of any such return, payment, registration, or record.

**(b) Permissible disclosure**

A disclosure otherwise prohibited by subsection (a) may be made in connection with the administration or civil or criminal enforcement of any tax imposed by this title. However, any document or information so disclosed may not be—

- (1) divulged or made known in any manner whatever by any officer or employee of the United States to any person except in connection with the administration or civil or criminal enforcement of this title, nor
- (2) used, directly or indirectly, in any criminal prosecution for any offense occurring before the date of enactment of this section.

**(c) Use of documents possessed by taxpayer**

Except in connection with the administration or civil or criminal enforcement of any tax imposed by this title—

- (1) any stamp denoting payment of the special tax under this chapter,
- (2) any original, copy, or abstract possessed by a taxpayer of any return, payment, or registration made by such taxpayer pursuant to this chapter, and
- (3) any information come at by the exploitation of any such document,

shall not be used against such taxpayer in any criminal proceeding.

**(d) Inspection by committees of Congress**

Section 6103(f) shall apply with respect to any return, payment, or registration made pursuant to this chapter.

(Added Pub. L. 93-499, §3(c)(1), Oct. 29, 1974, 88 Stat. 1550; amended Pub. L. 94-455, title XII, §1202(h)(6), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1688, 1834.)

**AMENDMENTS**

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (d). Pub. L. 94-455, §1202(h)(6), substituted “6103(f)” for “6103(d)”.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1202(h)(6) of Pub. L. 94-455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94-455, set out as a note under section 6103 of this title.

**EFFECTIVE DATE**

Section effective Dec. 1, 1974, and applicable only with respect to wagers placed on or after such date, see section 3(d)(1) of Pub. L. 93-499, set out as an Effective Date of 1974 Amendment note under section 4401 of this title.

**CHAPTER 36—CERTAIN OTHER EXCISE TAXES**

Subchapter	Sec. <sup>1</sup>
A. Harbor maintenance tax .....	4461
B. Transportation by water .....	4471
B. Occupational tax on coin-operated devices .....	<sup>2</sup> 4461
[C. Repealed.]	
D. Tax on use of certain vehicles .....	4481
[E, F. Repealed.]	

**AMENDMENTS**

1997—Pub. L. 105-34, title XIV, §1432(b)(2), Aug. 5, 1997, 110 Stat. 1050, struck out item for subchapter F “Tax on removal of hard mineral resources from deep seabed”.

1989—Pub. L. 101-239, title VII, §7504(b), Dec. 19, 1989, 103 Stat. 2363, added item for subchapter B.

1986—Pub. L. 99-662, title XIV, §1402(b), Nov. 17, 1986, 100 Stat. 4269, added item for subchapter A.

1982—Pub. L. 97-248, title II, §280(c)(2)(A), Sept. 3, 1982, 96 Stat. 564, struck out item for subchapter E.

1980—Pub. L. 96-283, title IV, §402(b), June 28, 1980, 94 Stat. 584, added item for subchapter F.

1970—Pub. L. 91-258, title II, §206(d)(1), May 21, 1970, 84 Stat. 246, added item for subchapter E.

1965—Pub. L. 89-44, title IV, §§402, 404, June 21, 1965, 79 Stat. 148, 149, struck out items for subchapters A and C.

<sup>1</sup> Section numbers editorially supplied.

<sup>2</sup> Subchapter repealed by Pub. L. 95-600 without corresponding amendment of chapter analysis.

1956—Act June 29, 1956, ch. 462, title II, § 206(c), 70 Stat. 391, added item for subchapter D.

### Subchapter A—Harbor Maintenance Tax

Sec.

4461. Imposition of tax.

4462. Definitions and special rules.

#### PRIOR PROVISIONS

A prior subchapter A (§§ 4451 to 4457), act Aug. 16, 1954, ch. 736, 68A Stat. 529, 530, related to tax on playing cards, prior to repeal by Pub. L. 89-44, title IV, § 402, June 21, 1965, 79 Stat. 148. Repeal of sections 4451 to 4457 applicable on and after June 22, 1965, see section 701(c)(2) of Pub. L. 89-44, set out in part as an Effective Date of 1965 Amendment note under section 4905 of this title.

### § 4461. Imposition of tax

#### (a) General rule

There is hereby imposed a tax on any port use.

#### (b) Amount of tax

The amount of the tax imposed by subsection (a) on any port use shall be an amount equal to 0.125 percent of the value of the commercial cargo involved.

#### (c) Liability and time of imposition of tax

##### (1) Liability

The tax imposed by subsection (a) shall be paid by—

(A) in the case of cargo entering the United States, the importer, or

(B) in any other case, the shipper.

##### (2) Time of imposition

Except as provided by regulations, the tax imposed by subsection (a) shall be imposed at the time of unloading.

(Added Pub. L. 99-662, title XIV, § 1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 101-508, title XI, § 11214(a), Nov. 5, 1990, 104 Stat. 1388-436; Pub. L. 109-59, title XI, § 11116(b), Aug. 10, 2005, 119 Stat. 1951.)

#### PRIOR PROVISIONS

For prior section 4461, see Prior Provisions note set out preceding section 4471 of this title.

#### AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109-59, § 11116(b)(1), inserted “or” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “in the case of cargo to be exported from the United States, the exporter, or”.

Subsec. (c)(2). Pub. L. 109-59, § 11116(b)(2), substituted “imposed” for “imposed—

“(A) in the case of cargo to be exported from the United States, at the time of loading, and

“(B) in any other case.”.

1990—Subsec. (b). Pub. L. 101-508 substituted “0.125 percent” for “0.04 percent”.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, § 11116(c), Aug. 10, 2005, 119 Stat. 1951, provided that: “The amendments made by this section [amending this section and section 4462 of this title] shall take effect before, on, and after the date of the enactment of this Act [Aug. 10, 2005].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, § 11214(b), Nov. 5, 1990, 104 Stat. 1388-436, provided that: “The amendment made by

subsection (a) [amending this section] shall take effect on January 1, 1991.”

#### EFFECTIVE DATE

Pub. L. 99-662, title XIV, § 1402(c), Nov. 17, 1986, 100 Stat. 4269, provided that: “The amendments made by this section [enacting this section and section 4462 of this title] shall take effect on April 1, 1987.”

#### AUTHORIZATION OF APPROPRIATIONS

Pub. L. 99-662, title XIV, § 1403(b), Nov. 17, 1986, 100 Stat. 4270, authorized to be appropriated to Department of the Treasury (from fees collected under section 58c(9), (10) of Title 19, Customs Duties) such sums as necessary to pay all expenses of administration incurred by such Department in administering this subchapter for periods to which such fees apply, prior to repeal by Pub. L. 103-182, title VI, § 690(c)(8), Dec. 8, 1993, 107 Stat. 2223.

#### STUDY OF CARGO DIVERSION

Pub. L. 99-662, title XIV, § 1407, Nov. 17, 1986, 100 Stat. 4272, as amended by Pub. L. 100-647, title II, § 2002(c), Nov. 10, 1988, 102 Stat. 3597, provided that:

“(a) INITIAL STUDY.—The Secretary of the Treasury, in consultation with United States ports, the Secretary of the Army, the Secretary of Transportation, the United States Trade Representative and other appropriate Federal agencies, shall conduct a study to determine the impact of the port use tax imposed under section 4461(a) of the Internal Revenue Code of 1954 [now 1986] on potential diversions of cargo from particular United States ports to any port in a country contiguous to the United States. The report of the study shall be submitted to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the United States Senate not later than December 1, 1988.

“(b) REVIEW.—The Secretary of the Treasury may, at any time, review and revise the findings of the study conducted pursuant to subsection (a) with respect to any United States port (or to any transaction or class of transactions at such port).

“(c) IMPLEMENTATION OF FINDINGS.—For purposes of section 4462(d)(2)(B) of the Internal Revenue Code of 1954 [now 1986], the findings of the study or review conducted pursuant to subsections (a) and (b) of this section shall be effective 60 days after notification to the ports concerned.”

### § 4462. Definitions and special rules

#### (a) Definitions

For purposes of this subchapter—

##### (1) Port use

The term “port use” means—

(A) the loading of commercial cargo on, or

(B) the unloading of commercial cargo from,

a commercial vessel at a port.

##### (2) Port

###### (A) In general

The term “port” means any channel or harbor (or component thereof) in the United States, which—

(i) is not an inland waterway, and

(ii) is open to public navigation.

###### (B) Exception for certain facilities

The term “port” does not include any channel or harbor with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which was deauthorized by Federal law before 1985.

**(C) Special rule for Columbia River**

The term “port” shall include the channels of the Columbia River in the States of Oregon and Washington only up to the downstream side of Bonneville lock and dam.

**(3) Commercial cargo****(A) In general**

The term “commercial cargo” means any cargo transported on a commercial vessel, including passengers transported for compensation or hire.

**(B) Certain items not included**

The term “commercial cargo” does not include—

- (i) bunker fuel, ship’s stores, sea stores, or the legitimate equipment necessary to the operation of a vessel, or
- (ii) fish or other aquatic animal life caught and not previously landed on shore.

**(4) Commercial vessel****(A) In general**

The term “commercial vessel” means any vessel used—

- (i) in transporting cargo by water for compensation or hire, or
- (ii) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel.

**(B) Exclusion of ferries****(i) In general**

The term “commercial vessel” does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.

**(ii) Ferry**

The term “ferry” means any vessel which arrives in the United States on a regular schedule during its operating season at intervals of at least once each business day.

**(5) Value****(A) In general**

The term “value” means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

**(B) Transportation of passengers**

In the case of the transportation of passengers for hire, the term “value” means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid.

**(b) Special rule for Alaska, Hawaii, and possessions****(1) In general**

No tax shall be imposed under section 4461(a) with respect to—

- (A) cargo loaded on a vessel in a port in the United States mainland for transportation to Alaska, Hawaii, or any possession of the United States for ultimate use or consumption in Alaska, Hawaii, or any possession of the United States,

- (B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,

- (C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively, or

- (D) cargo loaded on a vessel in Alaska, Hawaii, or a possession of the United States and unloaded in the State or possession in which loaded, or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters.

**(2) Cargo does not include crude oil with respect to Alaska**

For purposes of this subsection, the term “cargo” does not include crude oil with respect to Alaska.

**(3) United States mainland**

For purposes of this subsection, the term “United States mainland” means the continental United States (not including Alaska).

**(c) Coordination of tax where transportation subject to tax imposed by section 4042**

No tax shall be imposed under this subchapter with respect to the loading or unloading of any cargo on or from a vessel if any fuel of such vessel has been (or will be) subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

**(d) Nonapplicability of tax to exports**

The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.

**(e) Exemption for United States**

No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

**(f) Extension of provisions of law applicable to customs duty****(1) In general**

Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations shall apply in respect of the tax imposed by this subchapter (and in respect of persons liable therefor) as if such tax were a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

**(2) Jurisdiction of courts and agencies**

For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

**(3) Administrative provisions applicable to tax law not to apply**

The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F or any other provision of law relating to the administration and enforcement of internal revenue taxes.

**(g) Special rules**

Except as provided by regulations—

**(1) Tax imposed only once**

Only 1 tax shall be imposed under section 4461(a) with respect to the loading on and unloading from, or the unloading from and the loading on, the same vessel of the same cargo.

**(2) Exception for intraport movements**

Under regulations, no tax shall be imposed under section 4461(a) on the mere movement of cargo within a port.

**(3) Relay cargo**

Only 1 tax shall be imposed under section 4461(a) on cargo (moving under a single bill of lading) which is unloaded from one vessel and loaded onto another vessel at any port in the United States for relay to or from any port in Alaska, Hawaii, or any possession of the United States. For purposes of this paragraph, the term “cargo” does not include any item not treated as cargo under subsection (b)(2).

**(h) Exemption for humanitarian and development assistance cargos**

No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.

**(i) Regulations**

The Secretary may prescribe such additional regulations as may be necessary to carry out the purposes of this subchapter including, but not limited to, regulations—

- (1) providing for the manner and method of payment and collection of the tax imposed by this subchapter,
- (2) providing for the posting of bonds to secure payment of such tax,
- (3) exempting any transaction or class of transactions from such tax where the collection of such tax is not administratively practical, and
- (4) providing for the remittance or mitigation of penalties and the settlement or compromise of claims.

(Added Pub. L. 99-662, title XIV, §1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 100-647, title II, §2002(b), title VI, §§6109(a), 6110(a), Nov. 10, 1988, 102 Stat. 3597, 3712; Pub. L. 104-188, title I, §1704(i)(1), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 109-59, title XI, §11116(a), Aug. 10, 2005, 119 Stat. 1950.)

**PRIOR PROVISIONS**

For prior section 4462, see Prior Provisions note set out preceding section 4471 of this title.

**AMENDMENTS**

2005—Subsec. (d). Pub. L. 109-59 amended heading and text of subsec. (d) generally, substituting provisions re-

lating to nonapplicability of tax imposed by section 4461(a) to exports for provisions relating to nonapplicability of tax imposed by section 4461(a) to bonded commercial cargo entering the United States for transportation and direct exportation to a foreign country and inapplicability of this provision to certain cargo exported to Canada or Mexico.

1996—Subsec. (b)(1)(D). Pub. L. 104-188 inserted before period at end “, or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters”.

1988—Subsec. (b)(1)(B). Pub. L. 100-647, §2002(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland for ultimate use or consumption in the United States mainland.”.

Subsec. (g)(3). Pub. L. 100-647, §6110(a), added par. (3). Subsecs. (h), (i). Pub. L. 100-647, §6109(a), added subsec. (h) and redesignated former subsec. (h) as (i).

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-59 effective before, on, and after Aug. 10, 2005, see section 11116(c) of Pub. L. 109-59, set out as a note under section 4461 of this title.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Pub. L. 104-188, title I, §1704(i)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1402(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99-662, title XIV].”

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by section 2002(b) of Pub. L. 100-647 effective as if included in the provision of the Harbor Maintenance Revenue Act of 1986, Pub. L. 99-662, title XIV, to which it relates, see section 2002(d) of Pub. L. 100-647, set out as a note under section 4042 of this title.

Pub. L. 100-647, title VI, §6109(b), Nov. 10, 1988, 102 Stat. 3712, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1987.”

Pub. L. 100-647, title VI, §6110(b), Nov. 10, 1988, 102 Stat. 3713, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].”

**EFFECTIVE DATE**

Section effective Apr. 1, 1987, see section 1402(c) of Pub. L. 99-662, set out as a note under section 4461 of this title.

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

**Subchapter B—Transportation by Water**

Sec.  
4471. Imposition of tax.  
4472. Definitions.

**PRIOR PROVISIONS**

A prior subchapter B, consisted of sections 4461 to 4464 of this title, prior to repeal by Pub. L. 95-600, title



V, §521(b), Nov. 6, 1978, 92 Stat. 2884, applicable with respect to years beginning after June 30, 1980.

Section 4461, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 21, 1959, Pub. L. 86-344, §6(a), 73 Stat. 620; June 21, 1965, Pub. L. 89-44, title IV, §403(a), 79 Stat. 148, imposed a special tax on persons who maintained for use or permitted use of coin-operated gaming devices and provided an exception from such tax.

Section 4462, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 2, 1958, Pub. L. 85-859, title I, §152(a), 72 Stat. 1304; June 21, 1965, Pub. L. 89-44, title IV, §403(b), 79 Stat. 149; Oct. 4, 1976, Pub. L. 94-455, title XII, §1208(b), 90 Stat. 1709, defined coin-operated gaming devices.

Section 4463, act Aug. 16, 1954, ch. 736, 68A Stat. 531, related to administrative provisions.

Section 4464, added Pub. L. 92-178, title IV, §402(a), Dec. 10, 1971, 85 Stat. 534, and amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title V, §521(a), Nov. 6, 1978, 92 Stat. 2884, related to credit for State-imposed taxes.

#### AMENDMENTS

1996—Pub. L. 104-188, title I, §1704(t)(11), Aug. 20, 1996, 110 Stat. 1888, struck out “and special rules” after “Definitions” in item 4472.

### § 4471. Imposition of tax

#### (a) In general

There is hereby imposed a tax of \$3 per passenger on a covered voyage.

#### (b) By whom paid

The tax imposed by this section shall be paid by the person providing the covered voyage.

#### (c) Time of imposition

The tax imposed by this section shall be imposed only once for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States.

(Added Pub. L. 101-239, title VII, §7504(a), Dec. 19, 1989, 103 Stat. 2362.)

#### PRIOR PROVISIONS

A prior section 4471 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89-44, title IV, §404, June 21, 1965, 79 Stat. 149.

#### EFFECTIVE DATE

Pub. L. 101-239, title VII, §7504(c), Dec. 19, 1989, 103 Stat. 2363, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall apply to voyages beginning after December 31, 1989, which were not paid for before such date.

“(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter B of chapter 36 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990.”

### § 4472. Definitions

For purposes of this subchapter—

#### (1) Covered voyage

##### (A) In general

The term “covered voyage” means a voyage of—

- (i) a commercial passenger vessel which extends over 1 or more nights, or
- (ii) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States,

during which passengers embark or disembark the vessel in the United States. Such term shall not include any voyage on any vessel owned or operated by the United States, a State, or any agency or subdivision thereof.

#### (B) Exception for certain voyages on passenger vessels

The term “covered voyage” shall not include a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States.

#### (2) Passenger vessel

The term “passenger vessel” means any vessel having berth or stateroom accommodations for more than 16 passengers.

(Added Pub. L. 101-239, title VII, §7504(a), Dec. 19, 1989, 103 Stat. 2362.)

#### PRIOR PROVISIONS

A prior section 4472 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89-44, title IV, §404, June 21, 1965, 79 Stat. 149.

#### [Subchapter C—Repealed]

[§§ 4471 to 4474. Repealed. Pub. L. 89-44, title IV, §404, June 21, 1965, 79 Stat. 149]

Section 4471, act Aug. 16, 1954, ch. 736, 68A Stat. 532, imposed a \$20 annual tax upon bowling alleys, billiard tables, and pool tables to be paid by operators of bowling alleys, billiard rooms, and pool rooms.

Section 4472, act Aug. 16, 1954, ch. 736, 68A Stat. 532, defined bowling alley, billiard room, and pool room.

Section 4473, acts Aug. 16, 1954, ch. 736, 68A Stat. 532; Sept. 2, 1958, Pub. L. 85-859, title I, §153(a), 72 Stat. 1305, granted exemptions for hospitals, the armed forces, and certain non-profit and governmental organizations.

Section 4474, act Aug. 16, 1954, ch. 736, 68A Stat. 532, made cross references to chapter 40 and subtitle F for penalties and administrative provisions.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89-44, set out in part as an Effective Date of 1965 Amendment note under section 4402 of this title.

### Subchapter D—Tax on Use of Certain Vehicles

Sec.	
4481.	Imposition of tax.
4482.	Definitions.
4483.	Exemptions.
4484.	Cross references.

#### AMENDMENTS

1983—Pub. L. 97-473, title II, §202(b)(11), Jan. 14, 1983, 96 Stat. 2610, substituted “Cross references” for “Cross reference” in item 4484.

1956—Act June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 389, added subchapter heading and analysis of sections.

### § 4481. Imposition of tax

#### (a) Imposition of tax

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the following table:

<b>Taxable gross weight:</b>	<b>Rate of tax:</b>
At least 55,000 pounds, but not over 75,000 pounds.	\$100 per year plus \$22 for each 1,000 pounds (or fraction thereof) in ex- cess of 55,000 pounds.
Over 75,000 pounds .....	\$550.

**(b) By whom paid**

The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State or contiguous foreign country in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

**(c) Proration of tax****(1) Where first use occurs after first month**

If in any taxable period the first use of the highway motor vehicle is after the first month in such period, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such taxable period.

**(2) Where vehicle sold, destroyed, or stolen****(A) In general**

If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

**(B) Destroyed**

For purposes of subparagraph (A), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.

**(d) One tax liability per period****(1) In general**

To the extent that the tax imposed by this section is paid with respect to any highway motor vehicle for any taxable period, no further tax shall be imposed by this section for such taxable period with respect to such vehicle.

**(2) Cross reference**

**For privilege of paying tax imposed by this section in installments, see section 6156.<sup>1</sup>**

**(e) Electronic filing**

Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.

**(f) Period tax in effect**

The tax imposed by this section shall apply only to use before October 1, 2023.

(Added June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 390; amended Pub. L. 87-61, title II, §203(a), (b)(1), (2)(A), (B), June 29, 1961, 75 Stat. 124; Pub. L. 91-605, title III, §303(a)(7), (8), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94-280, title III, §303(a)(7), (8), May 5, 1976, 90 Stat. 456; Pub. L. 95-599, title V, §502(a)(6), (7), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 97-424, title V, §§513(a), (d), 516(a)(4), Jan. 6, 1983, 96 Stat. 2177, 2179, 2182; Pub. L. 98-369, div. A, title VII, §734(f), title IX, §901(a), July 18, 1984, 98 Stat. 980, 1003; Pub. L. 100-17, title V, §§502(a)(5), 507(a), Apr. 2, 1987, 101 Stat. 256, 260; Pub. L. 101-508, title XI, §1121(c)(5), Nov. 5, 1990, 104 Stat. 1388-426; Pub. L. 102-240, title VIII, §8002(a)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 104-188, title I, §1704(t)(57), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105-178, title IX, §9002(a)(1)(G), June 9, 1998, 112 Stat. 499; Pub. L. 108-357, title VIII, §867(a), (c), Oct. 22, 2004, 118 Stat. 1622; Pub. L. 109-14, §9(c)(1), May 31, 2005, 119 Stat. 336; Pub. L. 109-59, title XI, §11101(a)(2)(A), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 112-30, title I, §142(b)(1), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112-102, title IV, §402(b)(1), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112-141, div. D, title I, §40102(b)(1)(A), July 6, 2012, 126 Stat. 844; Pub. L. 114-94, div. C, title XXXI, §31102(b)(1), Dec. 4, 2015, 129 Stat. 1727.)

## REFERENCES IN TEXT

Section 6156, referred to in subsec. (d)(2), was repealed by Pub. L. 108-357, title VIII, §867(b)(1), Oct. 22, 2004, 118 Stat. 1622.

## AMENDMENTS

2015—Subsec. (f). Pub. L. 114-94 substituted “2023” for “2017”.

2012—Subsec. (f). Pub. L. 112-141 substituted “2017” for “2013”.

Pub. L. 112-102 substituted “2013” for “2012”.

2011—Subsec. (f). Pub. L. 112-30 substituted “2012” for “2011”.

2005—Subsec. (f). Pub. L. 109-59 substituted “2011” for “2006”.

Pub. L. 109-14 substituted “2006” for “2005”.

2004—Subsec. (c)(2). Pub. L. 108-357, §867(a)(2), substituted “sold, destroyed, or stolen” for “destroyed or stolen” in heading.

Subsec. (c)(2)(A). Pub. L. 108-357, §867(a)(1), substituted “sold, destroyed, or stolen” for “destroyed or stolen” in two places.

Subsecs. (e), (f). Pub. L. 108-357, §867(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1998—Subsec. (e). Pub. L. 105-178 substituted “2005” for “1999”.

1996—Subsec. (e). Pub. L. 104-188 provided that section 8002(a)(5) of Pub. L. 102-240 shall be applied as if “4481(e)” appeared instead of “4481(c)”. See 1991 Amendment note below.

1991—Subsec. (e). Pub. L. 102-240, which directed the substitution of “1999” for “1995” in subsec. (c), was executed by making the substitution in subsec. (e). See 1996 Amendment note above.

1990—Subsec. (e). Pub. L. 101-508 substituted “1995” for “1993”.

1987—Subsec. (b). Pub. L. 100-17, §507(a), inserted “or contiguous foreign country” after “State”.

Subsec. (e). Pub. L. 100-17, §502(a)(5), substituted “1993” for “1988”.

1984—Subsec. (a). Pub. L. 98-369, §901(a), in amending subsec. (a) generally, substituted “55,000” for “33,000” in provisions preceding table, struck out heading “(1) In general”, substituted table provisions for former table which provided:

<sup>1</sup> See References in Text note below.

Taxable gross weight		Rate of tax
At least	But less than	
33,000 pounds	55,000 .....	\$50 a year, plus \$25 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds.
55,000 pounds	80,000 .....	\$600 a year, plus the applicable rate for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
80,000 pounds or more	.....	The maximum tax a year.

and struck out par. (2) which provided applicable rates and maximum taxes for taxable periods beginning July 1, 1984 through 1988 or thereafter.

Pub. L. 98-369, § 734(f), struck out from subsec. (a), as subsec. (a) was in effect before the amendments made by section 513(a) of Pub. L. 97-424: "In case of the taxable period beginning on July 1, 1984, and ending on September 30, 1984, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof." See 1983 Amendment note below.

1983—Subsec. (a). Pub. L. 97-424, § 513(a), substituted "at least 33,000 pounds at the rate specified in the following table:" for "more than 26,000 pounds, at the rate of \$3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof.", and added pars. (1) and (2).

Subsec. (c). Pub. L. 97-424, § 513(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97-424, § 516(a)(4), substituted "1988" for "1984" after "October 1,".

1978—Subsec. (a). Pub. L. 95-599, § 502(a)(6), substituted "1984" for "1979" in two places.

Subsec. (e). Pub. L. 95-599, § 502(a)(7), substituted "1984" for "1979".

1976—Subsec. (a). Pub. L. 94-280, § 303(a)(7), substituted "1979" for "1977" in two places.

Subsec. (e). Pub. L. 94-280, § 303(a)(8), substituted "1979" for "1977".

1970—Subsec. (a). Pub. L. 91-605, § 303(a)(7), substituted "1977" for "1972" in two places.

Subsec. (e). Pub. L. 91-605, § 303(a)(8), substituted "1977" for "1972".

1961—Subsec. (a). Pub. L. 87-61, § 203(a), (b)(2)(A), increased rate of tax from \$1.50 to \$3.00 a year, and provided for a tax at the rate of 75 cents for each 1,000 pounds during the period beginning on July 1, 1972, and ending on September 30, 1972.

Subsec. (c). Pub. L. 87-61, § 203(b)(2)(B), substituted "any taxable period" for "any year", "after the first month in such period" for "after July 31", and "the last day in such taxable period" for "the last day of June following".

Subsec. (d). Pub. L. 87-61, § 203(b)(2)(B), made conforming changes to refer to payment of tax for a taxable period instead of payment for a year, and inserted cross reference to section 6156.

Subsec. (e). Pub. L. 87-61, § 203(b)(1), substituted "before October 1, 1972" for "after June 30, 1956, and before July 1, 1972".

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as an Effective and Termination Dates of 2012 Amendment note under section 4041 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-14, § 9(d), May 31, 2005, 119 Stat. 336, provided that: "The amendments made by this section [amending this section and sections 4482, 4483, 9503, and 9504 of this title] shall take effect on the date of the enactment of this Act [May 31, 2005]."

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 867(e), Oct. 22, 2004, 118 Stat. 1622, provided that: "The amendments made by this section [amending this section and section 4483 of this title and repealing section 6156 of this title] shall apply to taxable periods beginning after the date of the enactment of this Act [Oct. 22, 2004]."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-17, title V, § 507(d), Apr. 2, 1987, 101 Stat. 260, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4483 of this title] shall take effect on July 1, 1987."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 734(f) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Pub. L. 98-369, div. A, title IX, § 901(c), July 18, 1984, 98 Stat. 1004, provided that: "The amendment made by subsection (a) [amending this section] (and the provisions of subsection (b) [set out below]) shall take effect on July 1, 1984."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-424, title V, § 513(f), Jan. 6, 1983, 96 Stat. 2179, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 4482 and 4483 of this title and enacting provisions set out below] shall take effect on July 1, 1984.

"(2) SPECIAL RULE IN THE CASE OF CERTAIN OWNER-OPERATORS.—

"(A) IN GENERAL.—In the case of a small owner-operator, paragraph (1) of this subsection and paragraph (2) of section 4481(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall be applied by substituting for each date contained in such paragraphs a date which is 1 year after the date so contained.

"(B) SMALL OWNER-OPERATOR.—For purposes of this paragraph, the term "small owner-operator" means any person who owns and operates at any time during the taxable period no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code for such taxable period.

"[No subpar. (C) has been enacted.]

"(D) AGGREGATION OF VEHICLE OWNERSHIPS.—For purposes of subparagraph (B), all highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code which are owned by—

"(i) any trade or business (whether or not incorporated) which is under common control with the taxpayer (within the meaning of section 52(b)), or

"(ii) any member of any controlled groups of corporations of which the taxpayer is a member, for any taxable period shall be treated as being owned by the taxpayer during such period. The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sen-

tence, taxpayers who own highway motor vehicles through partnerships, joint ventures, and corporations.

“(E) CONTROLLED GROUPS OF CORPORATIONS.—For purposes of this paragraph, the term ‘controlled group of corporations’ has the meaning given to such term by section 1563(a), except that—

“(i) ‘more than 50 percent’ shall be substituted for ‘at least 80 percent’ each place it appears in section 1563(a)(1), and

“(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

“(F) HIGHWAY MOTOR VEHICLES.—For purposes of this paragraph, the term ‘highway motor vehicle’ has the meaning given to such term by section 4482(a) of such Code.”

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-61 effective July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date of 1956 Amendment note under section 4041 of this title.

#### REGULATIONS

Pub. L. 100-17, title V, §507(c), Apr. 2, 1987, 101 Stat. 260, provided that: “The Secretary of the Treasury or the delegate of the Secretary shall within 120 days after the date of the enactment of this section [Apr. 2, 1987] prescribe regulations governing payment of the tax imposed by section 4481 of the Internal Revenue Code of 1986 on any highway motor vehicle operated by a motor carrier domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country. Such regulations shall include a procedure by which the operator of such motor vehicle shall evidence that such operator has paid such tax at the time such motor vehicle enters the United States. In the event of the failure to provide evidence of payment, such regulations may provide for denial of entry of such motor vehicle into the United States.”

#### SPECIAL RULES IN THE CASE OF CERTAIN OWNER-OPERATORS

Pub. L. 98-369, div. A, title IX, §901(b), July 18, 1984, 98 Stat. 1003, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) SPECIAL RULE FOR TAXABLE PERIOD BEGINNING ON JULY 1, 1984.—In the case of a small owner-operator, the amount of the tax imposed by section 4481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the use of any highway motor vehicle subject to tax under section 4481(a) of such Code (as amended by subsection (a)) for the taxable period which begins on July 1, 1984, shall be the lesser of—

“(A) \$3 for each 1,000 pounds of taxable gross weight (or fraction thereof), or

“(B) the amount of the tax which would be imposed under such section 4481(a) without regard to this paragraph.

“(2) EXEMPTION FOR VEHICLES USED FOR LESS THAN 5,000 MILES (AND CERTAIN OTHER AMENDMENTS) TO TAKE EFFECT ON JULY 1, 1984.—In the case of a small owner-operator, notwithstanding subsection (f)(2) of section 513 of the Highway Revenue Act of 1982 [section 513(f)(2) of Pub. L. 97-424, set out as an Effective Date of 1983 Amendment note above], the amendments made by subsections (b), (c), and (d) of such section [amending sections 4481 to 4483 of this title] shall take effect on July 1, 1984.

“(3) SMALL OWNER-OPERATOR DEFINED.—For purposes of this subsection, the term ‘small owner-operator’ has the meaning given such term by section 513(f)(2) of the Highway Revenue Act of 1982.

“(4) TAXABLE GROSS WEIGHT.—For purposes of this subsection, the term ‘taxable gross weight’ has the

same meaning as when used in section 4481 of the Internal Revenue Code of 1986.”

#### STUDIES RELATING TO HEAVY VEHICLE USE TAX

Pub. L. 98-369, div. A, title IX, subtitle D, part I, July 18, 1984, 98 Stat. 1010, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“SEC. 931. WHETHER HEAVY VEHICLES BEAR FAIR SHARE OF HIGHWAY COSTS.

“The Secretary of Transportation shall conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the costs of the highway system.

“SEC. 932. TRANS-BORDER TRUCKING.

“The Secretary of Transportation shall conduct a study to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (relating to tax on use of certain vehicles) on trans-border trucking operations.

“SEC. 933. WEIGHT-DISTANCE TAXES.

“The Secretary of Transportation shall conduct a study to evaluate the feasibility and ability of weight-distance truck taxes to provide the greatest degree of equity among highway users, to ease the costs of compliance of such taxes, and to improve the efficiency by which such taxes might be administered. Such study shall also include an evaluation of the evasion potential for weight-distance taxes and an assessment of the benefits to interstate commerce of replacing all Federal truck taxes (other than fuel taxes) with a weight-distance tax.

“SEC. 934. REPORTS, ETC.

“(a) CONSULTATION WITH TREASURY.—Studies conducted under this part shall be conducted in consultation with the Secretary of the Treasury.

“(b) REPORT.—Not later than October 1, 1987, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each study conducted under this part together with such recommendations as the Secretary may deem advisable.”

#### STUDY OF ALTERNATIVES TO TAX ON USE OF HEAVY TRUCKS

Pub. L. 97-424, title V, §513(g), Jan. 6, 1983, 96 Stat. 2180, provided that the Secretary of Transportation, in consultation with the Secretary of the Treasury, conduct a study of alternatives to the tax on heavy vehicles imposed by section 4481(a) of the Internal Revenue Code, and plans for improving the collecting and enforcement of such tax and alternatives to such tax, such alternatives to include taxes based either singly or in suitable combinations on vehicle size or configuration; vehicle weight, both registered and actual operating weight; and distance traveled, and such plans for improving tax collection and enforcement to provide for Federal and State co-operation in such activities. The study was to be conducted in consultation with State officials, motor carriers, and other affected parties, and the Secretary of Transportation was to submit a report and recommendations to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than Jan. 1, 1985.

### § 4482. Definitions

#### (a) Highway motor vehicle

For purposes of this subchapter, the term “highway motor vehicle” means any motor vehicle which is a highway vehicle.

#### (b) Taxable gross weight

For purposes of this subchapter, the term “taxable gross weight”, when used with respect

to any highway motor vehicle, means the sum of—

(1) the actual unloaded weight of—

(A) such highway motor vehicle fully equipped for service, and

(B) the semitrailers and trailers (fully equipped for service) customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle, and

(2) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on the semitrailers and trailers referred to in paragraph (1)(B).

Taxable gross weight shall be determined under regulations prescribed by the Secretary (which regulations may include formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise).

**(c) Other definitions and special rule**

For purposes of this subchapter—

**(1) State**

The term “State” means a State and the District of Columbia.

**(2) Year**

The term “year” means the one-year period beginning on July 1.

**(3) Use**

The term “use” means use in the United States on the public highways.

**(4) Taxable period**

The term “taxable period” means any year beginning before July 1, 2023, and the period which begins on July 1, 2023, and ends at the close of September 30, 2023.

**(5) Customary use**

A semitrailer or trailer shall be treated as customarily used in connection with a highway motor vehicle if such vehicle is equipped to tow such semitrailer or trailer.

**(d) Special rule for taxable period in which termination date occurs**

In the case of the taxable period which ends on September 30, 2023, the amount of the tax imposed by section 4481 with respect to any highway motor vehicle shall be determined by reducing each dollar amount in the table contained in section 4481(a) by 75 percent.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 390; amended Pub. L. 87-61, title II, § 203(b)(2)(C), June 29, 1961, 75 Stat. 125; Pub. L. 91-605, title III, § 303(a)(9), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94-280, title III, § 303(a)(9), May 5, 1976, 90 Stat. 456; Pub. L. 94-455, title XIX, §§ 1904(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95-599, title V, § 502(a)(8), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 97-424, title V, §§ 513(c), (e), 516(a)(4), Jan. 6, 1983, 96 Stat. 2179, 2182; Pub. L. 100-17, title V, § 502(a)(5), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101-508, title XI, § 11211(c)(5), Nov. 5, 1990, 104 Stat. 1388-426; Pub. L. 102-240, title VIII, § 8002(a)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105-178, title IX,

§ 9002(a)(1)(H), (I), June 9, 1998, 112 Stat. 499; Pub. L. 109-14, § 9(c)(2), (3), May 31, 2005, 119 Stat. 336; Pub. L. 109-59, title XI, § 11101(a)(2)(B), (C), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 112-30, title I, § 142(b)(2), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112-102, title IV, § 402(b)(2), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112-140, title IV, § 402(e), June 29, 2012, 126 Stat. 403; Pub. L. 112-141, div. D, title I, § 40102(b)(1)(B), (2)(A), July 6, 2012, 126 Stat. 845; Pub. L. 114-94, div. C, title XXXI, § 31102(b)(2), Dec. 4, 2015, 129 Stat. 1727.)

AMENDMENTS

2015—Subsecs. (c)(4), (d). Pub. L. 114-94 substituted “2023” for “2017” wherever appearing.

2012—Subsec. (c)(4). Pub. L. 112-141, § 40102(b)(2)(A), amended par. (4) generally. Prior to amendment, text read as follows: “The term ‘taxable period’ means any year beginning before July 1, 2013, and the period which begins on July 1, 2013, and ends at the close of September 30, 2013.”

Pub. L. 112-140, § 1(c), 402(e), temporarily amended par. (4) generally, resulting in text identical to that after amendment by Pub. L. 112-102. See Amendment and Effective and Termination Dates of 2012 Amendment notes below.

Pub. L. 112-102 substituted “2013” for “2012” wherever appearing.

Subsec. (d). Pub. L. 112-141, § 40102(b)(1)(B), substituted “2017” for “2013”.

Pub. L. 112-102 substituted “2013” for “2012”.

2011—Subsecs. (c)(4), (d). Pub. L. 112-30 substituted “2012” for “2011” wherever appearing.

2005—Subsecs. (c)(4), (d). Pub. L. 109-59 substituted “2011” for “2006” wherever appearing.

Pub. L. 109-14 substituted “2006” for “2005” wherever appearing.

1998—Subsecs. (c)(4), (d). Pub. L. 105-178 substituted “2005” for “1999” wherever appearing.

1991—Subsecs. (c)(4), (d). Pub. L. 102-240 substituted “1999” for “1995” wherever appearing.

1990—Subsecs. (c)(4), (d). Pub. L. 101-508 substituted “1995” for “1993” wherever appearing.

1987—Subsecs. (c)(4), (d). Pub. L. 100-17 substituted “1993” for “1988” wherever appearing.

1983—Subsec. (c). Pub. L. 97-424, § 513(c)(2), inserted “and special rule” in heading.

Subsec. (c)(4). Pub. L. 97-424, § 516(a)(4), substituted “1988” for “1984” wherever appearing.

Subsec. (c)(5). Pub. L. 97-424, § 513(c)(1), added par. (5).

Subsec. (d). Pub. L. 97-424, § 513(e), added subsec. (d).

1978—Subsec. (c)(4). Pub. L. 95-599 substituted “1984” for “1979” wherever appearing.

1976—Subsec. (b). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(1). Pub. L. 94-455, § 1904(c), substituted “State and the District of Columbia” for “State, a Territory of the United States, and the District of Columbia”.

Subsec. (c)(4). Pub. L. 94-280 substituted “1979” for “1977” wherever appearing.

1970—Subsec. (c)(4). Pub. L. 91-605 substituted “1977” for “1972” wherever appearing.

1961—Subsec. (c)(4). Pub. L. 87-61 added par. (4).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Pub. L. 112-141, div. D, title I, § 40102(b)(2)(B), July 6, 2012, 126 Stat. 845, provided that: “The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 142 of the Surface Transportation Extension Act of 2011, Part II [Pub. L. 112-30].”

Amendment by section 40102(b)(1)(B) of Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112-140 effective as if included in section 402 of Pub. L. 112-102, see section 402(f)(2) of Pub. L. 112-140, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as a note under section 4041 of this title.

**EFFECTIVE DATE OF 2011 AMENDMENT**

Amendment by Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by section 513(c), (e) of Pub. L. 97-424 effective July 1, 1984, see section 513(f) of Pub. L. 97-424, set out as a note under section 4481 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1904(c) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

**EFFECTIVE DATE OF 1961 AMENDMENT**

Amendment by Pub. L. 87-61 effective July 1, 1961, see section 208 of Pub. L. 87-61, set out as a note under section 4041 of this title.

**SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS**

Amendment by section 513(c) of Pub. L. 97-424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97-424, see section 901(b)(2) of Pub. L. 98-369, set out as a note under section 4481 of this title.

**§ 4483. Exemptions**

**(a) State and local governmental exemption**

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any highway motor vehicle by any State or any political subdivision of a State.

**(b) Exemption for United States**

The Secretary of the Treasury may authorize exemption from the tax imposed by section 4481 as to the use by the United States of any particular highway motor vehicle, or class of highway motor vehicles, if he determines that the imposition of such tax with respect to such use will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

**(c) Certain transit-type buses**

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary may by regulations prescribe for purposes of this sub-

section), met the 60-percent passenger fare revenue test set forth in section 6421(b)(2) (as in effect on the day before the date of the enactment of the Energy Tax Act of 1978) as applied to the period prescribed for purposes of this subsection.

**(d) Exemption for trucks used for less than 5,000 miles on public highways**

**(1) Suspension of tax**

**(A) In general**

If—

(i) it is reasonable to expect that the use of any highway motor vehicle on public highways during any taxable period will be less than 5,000 miles, and

(ii) the owner of such vehicle furnishes such information as the Secretary may by forms or regulations require with respect to the expected use of such vehicle,

then the collection of the tax imposed by section 4481 with respect to the use of such vehicle shall be suspended during the taxable period.

**(B) Suspension ceases to apply where use exceeds 5,000 miles**

Subparagraph (A) shall cease to apply with respect to any highway motor vehicle whenever the use of such vehicle on public highways during the taxable period exceeds 5,000 miles.

**(2) Exemption**

If—

(A) the collection of the tax imposed by section 4481 with respect to any highway motor vehicle is suspended under paragraph (1),

(B) such vehicle is not used during the taxable period on public highways for more than 5,000 miles, and

(C) except as otherwise provided in regulations, the owner of such vehicle furnishes such information as the Secretary may require with respect to the use of such vehicle during the taxable period,

then no tax shall be imposed by section 4481 on the use of such vehicle for the taxable period.

**(3) Refund where tax paid and vehicle not used for more than 5,000 miles**

If—

(A) the tax imposed by section 4481 is paid with respect to any highway motor vehicle for any taxable period, and

(B) the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to such taxable period,

the amount of such tax shall be credited or refunded (without interest) to the person who paid such tax.

**(4) Relief from liability for tax under certain circumstances where truck is transferred**

Under regulations prescribed by the Secretary, the owner of a highway motor vehicle with respect to which the collection of the tax imposed by section 4481 is suspended under paragraph (1) shall not be liable for the tax imposed by section 4481 (and the new owner shall be liable for such tax) with respect to such vehicle if—

(A) such vehicle is transferred to a new owner,

(B) such suspension is in effect at the time of such transfer, and

(C) the old owner furnishes such information as the Secretary by forms and regulations requires with respect to the transfer of such vehicle.

**(5) 7,500-miles exemption for agricultural vehicles**

**(A) In general**

In the case of an agricultural vehicle, paragraphs (1) and (2) shall be applied by substituting “7,500” for “5,000” each place it appears.

**(B) Definitions**

For purposes of this paragraph—

**(i) Agricultural vehicle**

The term “agricultural vehicle” means any highway motor vehicle—

(I) used primarily for farming purposes, and

(II) registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

**(ii) Farming purposes**

The term “farming purposes” means the transporting of any farm commodity to or from a farm or the use directly in agricultural production.

**(iii) Farm commodity**

The term “farm commodity” means any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife.

**(6) Owner defined**

For purposes of this subsection, the term “owner” means, with respect to any highway motor vehicle, the person described in section 4481(b).

**(e) Reduction in tax for trucks used in logging**

The tax imposed by section 4481 shall be reduced by 25 percent with respect to any highway motor vehicle if—

(1) the exclusive use of such vehicle during any taxable period is the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) such vehicle is registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.

**[(f) Repealed. Pub. L. 108–357, title VIII, § 867(d), Oct. 22, 2004, 118 Stat. 1622]**

**(g) Exemption for mobile machinery**

No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).

**(h) Exemption for vehicles used in blood collection**

**(1) In general**

No tax shall be imposed by section 4481 on the use of any qualified blood collector vehicle by a qualified blood collector organization.

**(2) Qualified blood collector vehicle**

For purposes of this subsection, the term “qualified blood collector vehicle” means a vehicle at least 80 percent of the use of which during the prior taxable period was by a qualified blood collector organization in the collection, storage, or transportation of blood.

**(3) Special rule for vehicles first placed in service in a taxable period**

In the case of a vehicle first placed in service in a taxable period, a vehicle shall be treated as a qualified blood collector vehicle for such taxable period if such qualified blood collector organization certifies to the Secretary that the organization reasonably expects at least 80 percent of the use of such vehicle by the organization during such taxable period will be in the collection, storage, or transportation of blood.

**(4) Qualified blood collector organization**

The term “qualified blood collector organization” has the meaning given such term by section 7701(a)(49).

**(i) Termination of exemptions**

Subsections (a) and (c) shall not apply on and after October 1, 2023.

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 391; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), (B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–618, title II, § 233(a)(3)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 97–424, title V, §§ 513(b), 516(b)(3), Jan. 6, 1983, 96 Stat. 2177, 2183; Pub. L. 98–369, div. A, title IX, §§ 902(a), 903(a), July 18, 1984, 98 Stat. 1004; Pub. L. 100–17, title V, §§ 502(b)(5), 507(b), Apr. 2, 1987, 101 Stat. 257, 260; Pub. L. 101–508, title XI, § 11211(d)(4), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, § 8002(b)(4), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, § 9002(b)(2), June 9, 1998, 112 Stat. 500; Pub. L. 108–357, title VIII, §§ 851(b)(1), 867(d), Oct. 22, 2004, 118 Stat. 1607, 1622; Pub. L. 109–14, § 9(c)(4), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, § 11101(b)(2), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 109–280, title XII, § 1207(d), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 112–30, title I, § 142(d), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, § 402(d), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, § 402(c), June 29, 2012, 126 Stat. 403; Pub. L. 112–141, div. D, title I, § 40102(d)(2), July 6, 2012, 126 Stat. 845; Pub. L. 114–94, div. C, title XXXI, § 31102(d)(2), Dec. 4, 2015, 129 Stat. 1727.)

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Act of 1978, referred to in subsec. (c), is the date of enactment of Pub. L. 95–618, which was approved Nov. 9, 1978.

AMENDMENTS

2015—Subsec. (i). Pub. L. 114–94 substituted “October 1, 2023” for “October 1, 2017”.

2012—Subsec. (i). Pub. L. 112–141 substituted “October 1, 2017” for “July 1, 2012”.

Pub. L. 112–140, § 1(c), 402(c), temporarily substituted “July 7, 2012” for “July 1, 2012”. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted “July 1, 2012” for “April 1, 2012”.

2011—Subsec. (i). Pub. L. 112–30 substituted “April 1, 2012” for “October 1, 2011”.

2006—Subsecs. (h), (i). Pub. L. 109-280, which directed the amendment of section 4483 by adding subsec. (h) and redesignating former subsec. (h) as (i), without specifying the act to be amended, was executed by making the amendments to this section, which is section 4483 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (h). Pub. L. 109-59 substituted “2011” for “2006”.

Pub. L. 109-14 substituted “2006” for “2005”.

2004—Subsec. (f). Pub. L. 108-357, § 867(d), struck out heading and text of subsec. (f). Text read as follows: “If the base for registration purposes of any highway motor vehicle is in a contiguous foreign country for any taxable period, the tax imposed by section 4481 for such period shall be 75 percent of the tax which would (but for this subsection) be imposed by section 4481 for such period.”

Subsecs. (g), (h). Pub. L. 108-357, § 851(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (g). Pub. L. 105-178 substituted “2005” for “1999”.

1991—Subsec. (g). Pub. L. 102-240 substituted “1999” for “1995”.

1990—Subsec. (g). Pub. L. 101-508 substituted “1995” for “1993”.

1987—Subsec. (f). Pub. L. 100-17, § 507(b), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 100-17, § 502(b)(5), substituted “1993” for “1988”.

Subsec. (g). Pub. L. 100-17, § 507(b), redesignated former subsec. (f) as (g).

1984—Subsec. (d)(5), (6). Pub. L. 98-369, § 903(a), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (e), (f). Pub. L. 98-369, § 902(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1983—Subsec. (d). Pub. L. 97-424, § 513(b), added subsec. (d).

Subsec. (e). Pub. L. 97-424, § 516(b)(3), added subsec. (e).

1978—Subsec. (c). Pub. L. 95-618 inserted “(as in effect on the day before the date of the enactment of the Energy Tax Act of 1978)” after “section 6421(b)(2)”.

1976—Subsecs. (a), (c). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (b). Pub. L. 94-455, § 1906(b)(13)(B), inserted “of the Treasury” after “Secretary”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2016, see section 31102(f) of Pub. L. 114-94, set out as a note under section 4041 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective July 1, 2012, see section 40102(f) of Pub. L. 112-141, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112-140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112-141 to be executed as if Pub. L. 112-140 had not been enacted, see section 1(c) of Pub. L. 112-140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112-140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112-140, set out as a note under section 4041 of this title.

Amendment by Pub. L. 112-102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112-102, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112-30, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 effective Jan. 1, 2007, and applicable to taxable periods beginning on or after

July 1, 2007, see section 1207(g) of Pub. L. 109-280, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 851(b)(2), Oct. 22, 2004, 118 Stat. 1608, provided that: “The amendments made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004].”

Amendment by section 867(d) of Pub. L. 108-357 applicable to taxable periods beginning after Oct. 22, 2004, see section 867(e) of Pub. L. 108-357, set out as a note under section 4481 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 507(b) of Pub. L. 100-17 effective July 1, 1987, see section 507(d) of Pub. L. 100-17, set out as a note under section 4481 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title IX, § 902(b), July 18, 1984, 98 Stat. 1004, provided that: “The amendment made by this section [amending this section] shall take effect on July 1, 1984.”

Pub. L. 98-369, div. A, title IX, § 903(b), July 18, 1984, 98 Stat. 1004, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 513 of the Highway Revenue Act of 1982 [Pub. L. 97-424, see section 513(f) of Pub. L. 97-424, set out as an Effective Date of 1983 Amendment note under section 4481 of this title].”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 513(b) of Pub. L. 97-424 effective July 1, 1984, see section 513(f) of Pub. L. 97-424, set out as a note under section 4481 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as a note under section 34 of this title.

#### SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(b) of Pub. L. 97-424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97-424, see section 901(b)(2) of Pub. L. 98-369, set out as a note under section 4481 of this title.

### § 4484. Cross references

(1) **For penalties and administrative provisions applicable to this subchapter, see subtitle F.**

(2) **For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871.**

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 391; amended Pub. L. 97-473, title II, § 202(b)(10), Jan. 14, 1983, 96 Stat. 2610.)

#### AMENDMENTS

1983—Pub. L. 97-473 designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(5) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date of 1956 Amendment note under section 4041 of this title.



**[Subchapter E—Repealed]****[§§ 4491 to 4494. Repealed. Pub. L. 97-248, title II, § 280(c)(1), Sept. 3, 1982, 96 Stat. 564]**

Section 4491, added Pub. L. 91-258, title II, §206(a), May 21, 1970, 84 Stat. 243; amended Pub. L. 91-614, title III, §305(a), Dec. 31, 1970, 84 Stat. 1846; Pub. L. 96-298, §1(c)(1), July 1, 1980, 94 Stat. 829, provided for imposition of a tax on use of civil aircraft.

Section 4492, added Pub. L. 91-258, title II, §206(a), May 21, 1970, 84 Stat. 243; amended Pub. L. 94-530, §2(a), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95-163, §17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95-504, §2(b), Oct. 24, 1978, 92 Stat. 1705, provided definitions to be used for purposes of this subchapter.

Section 4493, added Pub. L. 91-258, title II, §206(a), May 21, 1970, 84 Stat. 244; amended Pub. L. 94-455, title XIX, §§1904(a)(13), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1814, 1834, enumerated special rules for payment of tax by lessees and certain persons engaged in foreign air commerce.

Section 4494, added Pub. L. 91-258, title II, §206(a), May 21, 1970, 84 Stat. 245, provided a cross reference to subtitle F of this title for penalties and administrative provisions applicable to this subchapter.

**EFFECTIVE DATE OF REPEAL**

Repeal applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendment note under section 4261 of this title.

**TAX ON USE OF AIRCRAFT**

Pub. L. 96-298, §1(c)(2), (3), July 1, 1980, 94 Stat. 829, set out various changes in the amount and rate of tax under former section 4491 of this title for period beginning on July 1, 1980, and ending on Oct. 1, 1980, and provided that due date for filing any tax return of tax imposed by such section 4491, with respect to any use after June 30, 1980, would not be earlier than Oct. 31, 1980.

**[Subchapter F—Repealed]****[§§ 4495 to 4498. Repealed. Pub. L. 105-34, title XIV, § 1432(b)(1), Aug. 5, 1997, 111 Stat. 1050]**

Section 4495, added Pub. L. 96-283, title IV, §402(a), June 28, 1980, 94 Stat. 582, provided for imposition of tax on removal of hard mineral resource from deep seabed.

Section 4496, added Pub. L. 96-283, title IV, §402(a), June 28, 1980, 94 Stat. 583, defined terms for purposes of this subchapter.

Section 4497, added Pub. L. 96-283, title IV, §402(a), June 28, 1980, 94 Stat. 583; amended Pub. L. 99-514, title XV, §1511(c)(7), Oct. 22, 1986, 100 Stat. 2745, related to imputed values for commercially recoverable metals and minerals and provided for suspension of tax on minerals held for later processing.

Section 4498, added Pub. L. 96-283, title IV, §402(a), June 28, 1980, 94 Stat. 584, provided for termination of tax imposed by section 4495.

**[CHAPTER 37—REPEALED]****[§§ 4501 to 4503. Repealed. Pub. L. 101-508, title XI, § 11801(a)(48), Nov. 5, 1990, 104 Stat. 1388-522]**

Section 4501, acts Aug. 16, 1954, ch. 736, 68A Stat. 533; May 29, 1956, ch. 342, §19, 70 Stat. 221; Sept. 2, 1958, Pub. L. 85-859, title I, §162(b), 72 Stat. 1306; July 6, 1960, Pub. L. 86-592, §2, 74 Stat. 330; Mar. 31, 1961, Pub. L. 87-15, §2(a), 75 Stat. 40; May 24, 1962, Pub. L. 87-456, title III, §302(a), (b), 76 Stat. 77; July 13, 1962, Pub. L. 87-535, §18(a), 76 Stat. 166; Nov. 8, 1965, Pub. L. 89-331, §13, 79 Stat. 1280; Oct. 14, 1971, Pub. L. 92-138, §18(b), 85 Stat. 390, related to imposition of tax upon sugar manufactured in United States.

Section 4502, acts Aug. 16, 1954, ch. 736, 68A Stat. 534; May 29, 1956, ch. 342, §20, 70 Stat. 221; June 25, 1959, Pub. L. 86-70, §22(c), 73 Stat. 146; July 12, 1960, Pub. L. 86-624, §18(f), 74 Stat. 416, provided for applicable definitions.

Section 4503, act Aug. 16, 1954, ch. 736, 68A Stat. 534, related to exemption for sugar manufactured for home consumption.

Prior sections 4504 and 4511 to 4514 were repealed by Pub. L. 87-456, title III, §302(d), May 24, 1962, 76 Stat. 77, effective with respect to articles entered or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, as provided by section 501(a) of Pub. L. 87-456.

Section 4504, acts Aug. 16, 1954, ch. 736, 68A Stat. 535; May 29, 1956, ch. 342, §21(a), 70 Stat. 221, required the tax imposed by section 4501(b) to be levied, assessed, collected and paid in the same manner as a duty imposed by the Tariff Act of 1930.

Section 4511, act Aug. 16, 1954, ch. 736, 68A Stat. 536, imposed a tax upon the processing of coconut oil, etc.

Section 4512, act Aug. 16, 1954, ch. 736, 68A Stat. 536, defined “first domestic processing”.

Section 4513, act Aug. 16, 1954, ch. 736, 68A Stat. 536, related to exemptions from the tax imposed.

Section 4514, act Aug. 16, 1954, ch. 736, 68A Stat. 536, set forth a cross-reference to subtitle F for administrative provisions.

**SAVINGS PROVISION**

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**[CHAPTER 38—REPEALED]<sup>1</sup>****[§ 4521. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 539, imposed a tax on petroleum products imported into the United States.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**[§§ 4531, 4532. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 540, imposed a tax on coal imported into the United States.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**[§§ 4541, 4542. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 541, imposed a tax on copper imported into the United States.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

<sup>1</sup> A new chapter 38 (§4611 et seq.) follows.

**[§§ 4551 to 4553. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 542, imposed a tax on lumber imported into the United States.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**[§§ 4561, 4562. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, imposed a tax on animal oils imported into the United States.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**[§§ 4571, 4572. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 544, imposed a tax on seeds and seed oil imported into the United States.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**[§§ 4581, 4582. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 544, imposed a tax on imports of any article, merchandise, or combination (except oils specified in section 4511), 10 percent or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified in sections 4561 and 4571, or of the oils, fatty acids, or salts specified in section 4511.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**[§§ 4591 to 4597. Repealed. Pub. L. 94-455, title XIX, § 1904(a)(15), Oct. 4, 1976, 90 Stat. 1814]**

Sections, comprising subchapter F, "Oleomargarine", were struck out in the repeal of this chapter by Pub. L. 94-455.

Section 4591, act Aug. 16, 1954, ch. 736, 68A Stat. 545, related to imposition of a tax on all oleomargarine imported from foreign countries.

Section 4592, act Aug. 16, 1954, ch. 736, 68A Stat. 545, related to definitions of oleomargarine, manufacturer, wholesale dealer, and retail sales.

Section 4593, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to exemptions to tax imposed by section 4591.

Section 4594, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to packing requirements for manufacturers of oleomargarine.

Section 4595, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to wholesale and retail selling requirements for oleomargarine.

Section 4596, act Aug. 16, 1954, ch. 736, 68A Stat. 547, related to filing of bonds by manufacturers of oleomargarine.

Section 4597, act Aug. 16, 1954, ch. 736, 68A Stat. 547, related to books and returns of wholesale dealers and manufacturers.

**EFFECTIVE DATE OF REPEAL**

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455 set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

**[§§ 4601 to 4603. Repealed. Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77]**

Section 4601, acts Aug. 16, 1954, ch. 736, 68A Stat. 548; Sept. 2, 1958, Pub. L. 85-859, title I, § 119(b)(4), 72 Stat. 1286, related to applicability of certain tariff provisions.

Sections 4602, 4603, act Aug. 16, 1954, ch. 736, 68A Stat. 548, related to contravention of trade agreements by certain taxes.

**EFFECTIVE DATE OF REPEAL**

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456, title V, May 24, 1962, 76 Stat. 78.

**CHAPTER 38—ENVIRONMENTAL TAXES**

Subchapter	Sec. <sup>1</sup>
A. Tax on petroleum .....	4611
B. Tax on certain chemicals .....	4661
C. Tax on certain imported substances .....	4671
D. Ozone-depleting chemicals, etc. ....	4681

**PRIOR PROVISIONS**

A prior chapter 38, consisting of sections 4521 to 4603 and relating to import taxes, was repealed by Pub. L. 87-456, title III, § 302(d), May 24, 1962, 76 Stat. 77, and Pub. L. 94-455, title XIX, § 1904(a)(15), Oct. 4, 1976, 90 Stat. 1814.

**AMENDMENTS**

1989—Pub. L. 101-239, title VII, § 7506(b), Dec. 19, 1989, 103 Stat. 2369, added item for subchapter D.

1986—Pub. L. 99-499, title V, § 515(b), Oct. 17, 1986, 100 Stat. 1769, added item for subchapter C.

Pub. L. 99-499, title V, § 514(a)(2), Oct. 17, 1986, 100 Stat. 1767, struck out item for subchapter C.

1980—Pub. L. 96-510, title II, § 231(b), Dec. 11, 1980, 94 Stat. 2804, added item for subchapter C.

Pub. L. 96-510, title II, § 211(a), Dec. 11, 1980, 94 Stat. 2797, added chapter 38 and analysis of subchapters consisting of items A and B.

**Subchapter A—Tax on Petroleum**

Sec.	
4611.	Imposition of tax.
4612.	Definitions and special rules.

**§ 4611. Imposition of tax****(a) General Rule**

There is hereby imposed a tax at the rate specified in subsection (c) on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

**(b) Tax on certain uses and exportation****(1) In general**

If—

(A) any domestic crude oil is used in or exported from the United States, and

<sup>1</sup> Section numbers editorially supplied.

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax at the rate specified in subsection (c) is hereby imposed on such crude oil.

**(2) Exception for use on premises where produced**

Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

**(c) Rate of tax**

**(1) In general**

The rate of the taxes imposed by this section is the sum of—

(A) the Hazardous Substance Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

**(2) Rates**

For purposes of paragraph (1)—

(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is—

(i) in the case of crude oil received or petroleum products entered before January 1, 2017, 8 cents a barrel, and

(ii) in the case of crude oil received or petroleum products entered after December 31, 2016, 9 cents a barrel.

**(d) Persons liable for tax**

**(1) Crude oil received at refinery**

The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

**(2) Imported petroleum product**

The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

**(3) Tax on certain uses or exports**

The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

**(e) Application of Hazardous Substance Superfund financing rate**

**(1) In general**

Except as provided in paragraphs (2) and (3), the Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996.

**(2) No tax if unobligated balance in Fund exceeds \$3,500,000,000**

If on December 31, 1993, or December 31, 1994—

(A) the unobligated balance in the Hazardous Substance Superfund exceeds \$3,500,000,000, and

(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed \$3,500,000,000 on December 31 of 1994 or 1995, respectively, if

no tax is imposed under this section and sections 4661 and 4671,

then no tax shall be imposed under this section (to the extent attributable to the Hazardous Substance Superfund financing rate) during 1994 or 1995, as the case may be.

**(3) No tax if amounts collected exceed \$11,970,000,000**

**(A) Estimates by Secretary**

The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under this section (to the extent attributable to the Hazardous Substance Superfund financing rate) and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1995.

**(B) Termination if \$11,970,000,000 credited before January 1, 1996**

If the Secretary estimates under subparagraph (A) that more than \$11,970,000,000 will be credited to the Fund before January 1, 1996, the Hazardous Substance Superfund financing rate under this section shall not apply after the date on which (as estimated by the Secretary) \$11,970,000,000 will be so credited to the Fund.

**(f) Application of Oil Spill Liability Trust Fund financing rate**

**(1) In general**

Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after April 1, 2006, or if later, the date which is 30 days after the last day of any calendar quarter for which the Secretary estimates that, as of the close of that quarter, the unobligated balance in the Oil Spill Liability Trust Fund is less than \$2,000,000,000.

**(2) Termination**

The Oil Spill Liability Trust Fund financing rate shall not apply after December 31, 2017.

(Added Pub. L. 96-510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2797; amended Pub. L. 99-499, title V, §§511(a), 512(a), (b), Oct. 17, 1986, 100 Stat. 1760, 1761; Pub. L. 99-509, title VIII, §8032(a), (c)(1), (2), Oct. 21, 1986, 100 Stat. 1957, 1958; Pub. L. 100-647, title VI, §6108, Nov. 10, 1988, 102 Stat. 3712; Pub. L. 101-221, §8(a), Dec. 12, 1989, 103 Stat. 1891; Pub. L. 101-239, title VII, §7505(a), (b), Dec. 19, 1989, 103 Stat. 2363; Pub. L. 101-508, title XI, §11231(a)(1)(B), (2), (b), Nov. 5, 1990, 104 Stat. 1388-445; Pub. L. 109-58, title XIII, §1361, Aug. 8, 2005, 119 Stat. 1058; Pub. L. 110-343, div. B, title IV, §405(a)(1), (b)(1), (2), Oct. 3, 2008, 122 Stat. 3860, 3861; Pub. L. 113-295, div. A, title II, §221(a)(12)(I), Dec. 19, 2014, 128 Stat. 4039.)

**CODIFICATION**

Amendments by Pub. L. 99-509, title VIII, §8031(a), (b), and (d)(1), Oct. 21, 1986, 100 Stat. 1955, to subsecs. (a) to (e) of this section were not executed to text pursuant to Pub. L. 99-509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not

take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99-499, approved Oct. 17, 1986.

#### AMENDMENTS

2014—Subsec. (e)(2)(B). Pub. L. 113-295, § 221(a)(12)(I)(i), substituted “this section” for “section 59A, this section.”

Subsec. (e)(3)(A). Pub. L. 113-295, § 221(a)(12)(I)(ii), struck out “section 59A,” after “collected under” and comma after “rate”).

2008—Subsec. (c)(2)(B). Pub. L. 110-343, § 405(a)(1), substituted “is—” for “is 5 cents a barrel.” and added cls. (i) and (ii).

Subsec. (f)(1). Pub. L. 110-343, § 405(b)(2), substituted “paragraph (2)” for “paragraphs (2) and (3)”.

Subsec. (f)(2), (3). Pub. L. 110-343, § 405(b)(1), added par. (2) and struck out former pars. (2) and (3), which provided that the Oil Spill Liability Trust Fund financing rate would not apply if the unobligated balance in the Fund exceeded \$2,700,000,000 and that the Fund financing rate would not apply after Dec. 31, 2014.

2005—Subsec. (f). Pub. L. 109-58 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995.

“(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS \$1,000,000,000.—The Oil Spill Liability Trust Fund financing rate shall not apply during any calendar quarter if the Secretary estimates that as of the close of the preceding calendar quarter the unobligated balance in the Oil Spill Liability Trust Fund exceeds \$1,000,000,000.”

1990—Subsec. (e)(1). Pub. L. 101-508, § 11231(a)(1)(B), substituted “January 1, 1996” for “January 1, 1992”.

Subsec. (e)(2). Pub. L. 101-508, § 11231(a)(2), substituted “1993” for “1989” and “1994” for “1990” in introductory provisions and “1994” for “1990” and “1995” for “1991” in subpar. (B) and concluding provisions.

Subsec. (e)(3). Pub. L. 101-508, § 11231(b), substituted “\$11,970,000,000” for “\$6,650,000,000” in heading.

Subsec. (e)(3)(A). Pub. L. 101-508, § 11231(b), substituted “December 31, 1995” for “December 31, 1991”.

Subsec. (e)(3)(B). Pub. L. 101-508, § 11231(a)(1)(B), (b), substituted “January 1, 1996” for “January 1, 1992” in heading and text and “\$11,970,000,000” for “\$6,650,000,000” in heading and twice in text.

1989—Subsec. (c)(2)(A). Pub. L. 101-221 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the Hazardous Substance Superfund financing rate is—

“(i) except as provided in clause (ii), 8.2 cents a barrel, and

“(ii) 11.7 cents a barrel in the case of the tax imposed by subsection (a)(2), and”.

Subsec. (c)(2)(B). Pub. L. 101-239, § 7505(b), substituted “5 cents” for “1.3 cents”.

Subsec. (f). Pub. L. 101-239, § 7505(a)(1), amended subsec. (f) generally, substituting pars. (1) and (2) for former pars. (1) general applicability, (2) commencement date, and (3) limit on tax of \$300,000,000.

1988—Subsec. (f)(2)(B). Pub. L. 100-647 substituted “December 31, 1990” for “September 1, 1987”.

1986—Subsecs. (a), (b)(1). Pub. L. 99-499, § 512(a), substituted “at the rate specified in subsection (c)” for “of 0.79 cent a barrel”.

Subsec. (c). Pub. L. 99-509, § 8032(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

“(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel.”

Pub. L. 99-499, § 512(b), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 99-499, § 512(b), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99-509, § 8032(c)(1), substituted “Hazardous Substance Superfund financing rate” for “taxes” in heading, substituted “the Hazardous Substance Superfund financing rate under this section” for “the taxes imposed by this section” in par. (1), inserted “(to the extent attributable to the Hazardous Substance Superfund financing rate)” after “this section” in pars. (2) and (3)(A), and substituted “the Hazardous Substance Superfund financing rate under this section shall not apply” for “no tax shall be imposed under this section” in par. (3)(B).

Pub. L. 99-499, §§ 511(a), 512(b), amended subsec. (d) generally and redesignated it as (e). Prior to amendment and redesignation, subsec. (d), termination, read as follows: “The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

“(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds \$900,000,000, and

“(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed \$500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).”

Subsec. (f). Pub. L. 99-509, § 8032(c)(2), added subsec. (f).

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title IV, § 405(a)(2), Oct. 3, 2008, 122 Stat. 3860, provided that: “The amendment made by this subsection [amending this section] shall apply on and after the first day of the first calendar quarter beginning more than 60 days after the date of the enactment of this Act [Oct. 3, 2008].”

Pub. L. 110-343, div. B, title IV, § 405(b)(3), Oct. 3, 2008, 122 Stat. 3861, provided that: “The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-221, § 8(b), Dec. 12, 1989, 103 Stat. 1891, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 12, 1989].”

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-509, title VIII, § 8032(d), Oct. 21, 1986, 100 Stat. 1959, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 4612, 4661, 4671, and 9507 of this title] shall take effect on the commencement date (as defined in [former] section 4611(f)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section).

“(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall take effect only if the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99-499, approved Oct. 17, 1986] is enacted.”

[Pub. L. 101-239, title VII, § 7505(d)(1), Dec. 19, 1989, 103 Stat. 2363, provided that: “For purposes of sections 8032(d) and 8033(c) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99-509, set out as notes above

and under section 9509 of this title], the commencement date is January 1, 1990.”]

Pub. L. 99-499, title V, §511(c), Oct. 17, 1986, 100 Stat. 1761, provided that: “The amendments made by this section [amending this section and repealing section 9653 of Title 42, The Public Health and Welfare] shall take effect on January 1, 1987.”

Pub. L. 99-499, title V, §512(d), Oct. 17, 1986, 100 Stat. 1761, provided that: “The amendments made by this section [amending this section and section 4612 of this title] shall take effect on January 1, 1987.”

#### EFFECTIVE DATE

Pub. L. 96-510, title II, §211(c), Dec. 11, 1980, 94 Stat. 2801, provided that: “The amendments made by this section [enacting subchapters A and B of this chapter] shall take effect on April 1, 1981.”

#### SHORT TITLE

For short title of title II of Pub. L. 96-510 as the “Hazardous Substance Response Revenue Act of 1980”, see Short Title of 1980 Amendment note, set out under section 1 of this title.

### § 4612. Definitions and special rules

#### (a) Definitions

For purposes of this subchapter—

##### (1) Crude oil

The term “crude oil” includes crude oil condensates and natural gasoline.

##### (2) Domestic crude oil

The term “domestic crude oil” means any crude oil produced from a well located in the United States.

##### (3) Petroleum product

The term “petroleum product” includes crude oil.

##### (4) United States

###### (A) In general

The term “United States” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

###### (B) United States includes continental shelf areas

The principles of section 638 shall apply for purposes of the term “United States”.

###### (C) United States includes foreign trade zones

The term “United States” includes any foreign trade zone of the United States.

##### (5) United States refinery

The term “United States refinery” means any facility in the United States at which crude oil is refined.

##### (6) Refineries which produce natural gasoline

In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

##### (7) Premises

The term “premises” has the same meaning as when used for purposes of determining gross income from the property under section 613.

#### (8) Barrel

The term “barrel” means 42 United States gallons.

#### (9) Fractional part of barrel

In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

#### (b) Only 1 tax imposed with respect to any product

No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

#### (c) Credit where crude oil returned to pipeline

Under regulations prescribed by the Secretary, if an operator of a United States refinery—

(1) removes crude oil from a pipeline, and

(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611.

#### (d) Credit against portion of tax attributable to oil spill rate

There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

(1) the sum of—

(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

(B) the interest accrued on such amounts before such date, over

(2) the amount of such payments taken into account under this subsection for all prior periods.

The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. For purposes of this subsection, all taxpayers which would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting “100 percent” for “80 percent” shall be treated as 1 taxpayer.

#### (e) Income tax credit for unused payments into Trans-Alaska Pipeline Liability Fund

##### (1) In general

For purposes of section 38, the current year business credit shall include the credit determined under this subsection.

**(2) Determination of credit****(A) In general**

The credit determined under this subsection for any taxable year is an amount equal to the aggregate credit which would be allowed to the taxpayer under subsection (d) for amounts paid into the Trans-Alaska Pipeline Liability Fund had the Oil Spill Liability Trust Fund financing rate not ceased to apply.

**(B) Limitation****(i) In general**

The amount of the credit determined under this subsection for any taxable year with respect to any taxpayer shall not exceed the excess of—

(I) the amount determined under clause (ii), over

(II) the aggregate amount of the credit determined under this subsection for prior taxable years with respect to such taxpayer.

**(ii) Overall limitation**

The amount determined under this clause with respect to any taxpayer is the excess of—

(I) the aggregate amount of credit which would have been allowed under subsection (d) to the taxpayer for periods before the termination date specified in section 4611(f)(1), if amounts in the Trans-Alaska Pipeline Liability Fund which are actually transferred into the Oil Spill Liability Fund were transferred<sup>1</sup> on January 1, 1990, and the Oil Spill Liability Trust Fund financing rate did not terminate before such termination date, over

(II) the aggregate amount of the credit allowed under subsection (d) to the taxpayer.

**(3) Cost of income tax credit borne by Trust Fund****(A) In general**

The Secretary shall from time to time transfer from the Oil Spill Liability Trust Fund to the general fund of the Treasury amounts equal to the credits allowed by reason of this subsection.

**(B) Trust Fund balance may not be reduced below \$1,000,000,000**

Transfers may be made under subparagraph (A) only to the extent that the unobligated balance of the Oil Spill Liability Trust Fund exceeds \$1,000,000,000. If any transfer is not made by reason of the preceding sentence, such transfer shall be made as soon as permitted under such sentence.

**(4) No carryback**

No portion of the unused business credit for any taxable year which is attributable to the credit determined under this subsection may be carried to a taxable year beginning on or before the date of the enactment of this paragraph.

**(f) Disposition of revenues from Puerto Rico and the Virgin Islands**

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

(Added Pub. L. 96-510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2798; amended Pub. L. 99-499, title V, §512(c), Oct. 17, 1986, 100 Stat. 1761; Pub. L. 99-509, title VIII, §8032(b), Oct. 21, 1986, 100 Stat. 1957; Pub. L. 101-239, title VII, §7505(c), Dec. 19, 1989, 103 Stat. 2363; Pub. L. 101-380, title IX, §9002, Aug. 18, 1990, 104 Stat. 574; Pub. L. 102-486, title XIX, §1922(a), Oct. 24, 1992, 106 Stat. 3028.)

## REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of the enactment of Pub. L. 102-486, which was approved Oct. 24, 1992.

## CODIFICATION

Amendments by Pub. L. 99-509, title VIII, §8031(c), Oct. 21, 1986, 100 Stat. 1955, to subsections (c) and (d) of this section were not executed to text pursuant to Pub. L. 99-509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99-499, approved Oct. 17, 1986.

## AMENDMENTS

1992—Subsecs. (e), (f). Pub. L. 102-486 added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (d). Pub. L. 101-380 substituted at end “For purposes of this subsection, all taxpayers which would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting ‘100 percent’ for ‘80 percent’ shall be treated as 1 taxpayer.” for “Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund.”

1989—Subsec. (d). Pub. L. 101-239 inserted at end “The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund.”

1986—Subsec. (c). Pub. L. 99-499 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 99-509 added subsec. (d) and redesignated former subsec. (d) as (e).

Pub. L. 99-499 redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 99-509 redesignated former subsec. (d) as (e).

## EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, §1922(b), Oct. 24, 1992, 106 Stat. 3029, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 24, 1992].”

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

## EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-509 effective on commencement date as defined in section 4611(f)(2), see section

<sup>1</sup> So in original. Probably should be “transferred”.

8032(d) of Pub. L. 99-509, set out as a note under section 4611 of this title.

Amendment by Pub. L. 99-499 effective Jan. 1, 1987, see section 512(d) of Pub. L. 99-499, set out as a note under section 4611 of this title.

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

### Subchapter B—Tax on Certain Chemicals

Sec.

4661. Imposition of tax.

4662. Definitions and special rules.

#### § 4661. Imposition of tax

##### (a) General rule

There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

##### (b) Amount of tax

The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	The tax is the following amount per ton
Acetylene .....	\$4.87
Benzene .....	4.87
Butane .....	4.87
Butylene .....	4.87
Butadiene .....	4.87
Ethylene .....	4.87
Methane .....	3.44
Naphthalene .....	4.87
Propylene .....	4.87
Toluene .....	4.87
Xylene .....	4.87
Ammonia .....	2.64
Antimony .....	4.45
Antimony trioxide .....	3.75
Arsenic .....	4.45
Arsenic trioxide .....	3.41
Barium sulfide .....	2.30
Bromine .....	4.45
Cadmium .....	4.45
Chlorine .....	2.70
Chromium .....	4.45
Chromite .....	1.52
Potassium dichromate .....	1.69
Sodium dichromate .....	1.87
Cobalt .....	4.45
Cupric sulfate .....	1.87
Cupric oxide .....	3.59
Cuprous oxide .....	3.97
Hydrochloric acid .....	0.29
Hydrogen fluoride .....	4.23
Lead oxide .....	4.14
Mercury .....	4.45
Nickel .....	4.45
Phosphorus .....	4.45
Stannous chloride .....	2.85
Stannic chloride .....	2.12
Zinc chloride .....	2.22
Zinc sulfate .....	1.90
Potassium hydroxide .....	0.22
Sodium hydroxide .....	0.28
Sulfuric acid .....	0.26
Nitric acid .....	0.24

For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting "10.13" for "4.87".

##### (c) Termination

No tax shall be imposed under this section during any period during which the Hazardous Substance Superfund financing rate under section 4611 does not apply.

(Added Pub. L. 96-510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2798; amended Pub. L. 99-499, title V, §513(a), Oct. 17, 1986, 100 Stat. 1761; Pub. L. 99-509, title VIII, §8032(c)(3), Oct. 21, 1986, 100 Stat. 1958.)

#### CODIFICATION

Amendment by Pub. L. 99-509, title VIII, §8031(d)(2), Oct. 21, 1986, 100 Stat. 1956, to subsec. (c) of this section was not executed to text pursuant to Pub. L. 99-509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99-499, approved Oct. 17, 1986.

#### AMENDMENTS

1986—Subsec. (b). Pub. L. 99-499 inserted at end "For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

Subsec. (c). Pub. L. 99-509 substituted "the Hazardous Substance Superfund financing rate under section 4611 does not apply" for "no tax is imposed under section 4611(a)".

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99-509, set out as a note under section 4611 of this title.

Pub. L. 99-499, title V, §513(h), Oct. 17, 1986, 100 Stat. 1765, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 4662 of this title] shall take effect on January 1, 1987.

"(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

"(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

"(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

"(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding 'has not collected'.

"(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

"(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term 'xylene' shall include any isomer of xylene whether or not separated.

"(3) INVENTORY EXCHANGES.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96-510, enacting this chapter].

“(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1986.

“(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

“(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

“(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

“(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

“(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

“(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

“(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.”

#### EFFECTIVE DATE

Subchapter effective Apr. 1, 1981, see section 211(c) of Pub. L. 96-510, set out as a note under section 4611 of this title.

### § 4662. Definitions and special rules

#### (a) Definitions

For purposes of this subchapter—

##### (1) Taxable chemical

Except as provided in subsection (b), the term “taxable chemical” means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

##### (2) United States

The term “United States” has the meaning given such term by section 4612(a)(4).

#### (3) Importer

The term “importer” means the person entering the taxable chemical for consumption, use, or warehousing.

#### (4) Ton

The term “ton” means 2,000 pounds. In the case of any taxable chemical which is a gas, the term “ton” means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

#### (5) Fractional part of ton

In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

#### (b) Exceptions; other special rules

For purposes of this subchapter—

##### (1) Methane or butane used as a fuel

Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

##### (2) Substances used in the production of fertilizer

###### (A) In general

In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

###### (B) Qualified fertilizer substance

For purposes of this section, the term “qualified fertilizer substance” means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

###### (C) Qualified fertilizer use

The term “qualified fertilizer use” means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

###### (D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

##### (3) Sulfuric acid produced as a byproduct of air pollution control

In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.



**(4) Substances derived from coal**

For purposes of this subchapter, the term “taxable chemical” shall not include any substance to the extent derived from coal.

**(5) Substances used in the production of motor fuel, etc.****(A) In general**

In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

**(B) Qualified fuel substance**

For purposes of this section, the term “qualified fuel substance” means any substance—

- (i) used in a qualified fuel use by the manufacturer, producer, or importer,
- (ii) sold for use by any purchaser in a qualified fuel use, or
- (iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

**(C) Qualified fuel use**

For purposes of this subsection, the term “qualified fuel use” means—

- (i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or
- (ii) any use as such a fuel.

**(D) Chemicals to which paragraph applies**

For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

**(E) Taxation of nonqualified sale or use**

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

**(6) Substance having transitory presence during refining process, etc.****(A) In general**

No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

**(B) Chemicals to which subparagraph (A) applies**

The chemicals described in this subparagraph are—

- (i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and
- (ii) any solution or mixture containing any chemical described in clause (i).

**(C) Removal treated as use**

Nothing in subparagraph (A) shall be construed to apply to any chemical which is re-

moved from or ceases to be part of any smelting, refining, or other extraction process.

**(7) Special rule for xylene**

Except in the case of any substance imported into the United States or exported from the United States, the term “xylene” does not include any separated isomer of xylene.

**(8) Recycled chromium, cobalt, and nickel****(A) In general**

No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

**(B) Exemption not to apply while corrective action uncompleted**

Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

**(C) Required corrective action**

For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

- (i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

- (I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

- (II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

- (ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

**(D) Special rule for groundwater treatment**

In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

**(E) Solid waste**

For purposes of this paragraph, the term “solid waste” has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.

**(9) Substances used in the production of animal feed****(A) In general**

In the case of—

- (i) nitric acid,
- (ii) sulfuric acid,
- (iii) ammonia, or
- (iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

**(B) Qualified animal feed substance**

For purposes of this section, the term “qualified animal feed substance” means any substance—

- (i) used in a qualified animal feed use by the manufacturer, producer, or importer,
- (ii) sold for use by any purchaser in a qualified animal feed use, or
- (iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

**(C) Qualified animal feed use**

The term “qualified animal feed use” means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

**(D) Taxation of nonqualified sale or use**

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

**(10) Hydrocarbon streams containing mixtures of organic taxable chemicals**

**(A) In general**

No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals.

**(B) Removal, etc., treated as use**

For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

- (i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and
- (ii) such person shall be treated as the manufacturer of such chemical.

**(C) Registration requirement**

Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

**(D) Organic taxable chemical**

For purposes of this paragraph, the term “organic taxable chemical” means any taxable chemical which is an organic substance.

**(c) Use and certain exchanges by manufacturer, etc.**

**(1) Use treated as sale**

Except as provided in subsections (b) and (e), if any person manufactures, produces, or im-

ports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

**(2) Special rules for inventory exchanges**

**(A) In general**

Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

- (i) such exchange shall not be treated as a sale, and
- (ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

**(B) Registration requirement**

Subparagraph (A) shall not apply to any inventory exchange unless—

- (i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and
- (ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

**(C) Inventory exchange**

For purposes of this paragraph, the term “inventory exchange” means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(a)(1).

**(d) Refund or credit for certain uses**

**(1) In general**

Under regulations prescribed by the Secretary, if—

- (A) a tax under section 4661 was paid with respect to any taxable chemical, and
- (B) such chemical was used by any person in the manufacture or production of any other substance which is a taxable chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section).

**(2) Use as fertilizer**

Under regulations prescribed by the Secretary, if—

- (A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and
- (B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to

subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

**(3) Use as qualified fuel**

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

**(4) Use in the production of animal feed**

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

**(e) Exemption for exports of taxable chemicals**

**(1) Tax-free sales**

**(A) In general**

No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

**(B) Proof of export required**

Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

**(2) Credit or refund where tax paid**

**(A) In general**

Except as provided in subparagraph (B), if—

(i) tax under section 4661 was paid with respect to any taxable chemical, and

(ii)(I) such chemical was exported by any person, or

(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

**(B) Condition to allowance**

No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

**(3) Refunds directly to exporter**

The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations.

**(4) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

**(f) Disposition of revenues from Puerto Rico and the Virgin Islands**

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.

(Added Pub. L. 96-510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2799; amended Pub. L. 98-369, div. A, title X, §1019(a)-(c), July 18, 1984, 98 Stat. 1022-1024; Pub. L. 99-499, title V, §513(b)-(g), Oct. 17, 1986, 100 Stat. 1762-1765; Pub. L. 100-647, title II, §2001(a), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 106-170, title V, §532(c)(2)(U), Dec. 17, 1999, 113 Stat. 1931.)

REFERENCES IN TEXT

Sections 3005, 3004, and 3008 of the Solid Waste Disposal Act, referred to in subsec. (b)(8)(C)(i)(I), and section 1004 of that Act, referred to in subsec. (b)(8)(E), are classified to sections 6925, 6924, 6928, and 6903, respectively, of Title 42, The Public Health and Welfare.

Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(8)(C)(i)(II), is classified to section 9606 of Title 42.

AMENDMENTS

1999—Subsec. (c)(2)(C). Pub. L. 106-170 substituted “section 1221(a)(1)” for “section 1221(1)”.

1988—Subsec. (b)(10)(A). Pub. L. 100-647, §2001(a)(2), substituted “one or more” for “a mixture of”.

Subsec. (e)(3), (4). Pub. L. 100-647, §2001(a)(1), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (b)(7). Pub. L. 99-499, §513(c), added par. (7).

Subsec. (b)(8). Pub. L. 99-499, §513(d), added par. (8).

Subsec. (b)(9). Pub. L. 99-499, §513(e)(1), added par. (9).

Subsec. (b)(10). Pub. L. 99-499, §513(g), added par. (10).

Subsec. (c). Pub. L. 99-499, §513(f), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.”

Subsec. (d)(1). Pub. L. 99-499, §513(b)(2), substituted “which is a taxable chemical” for “the sale of which by such person would be taxable under such section”, in

subpar. (B), and substituted “imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)” for “imposed by such section on the other substance manufactured or produced” in last sentence.

Subsec. (d)(4). Pub. L. 99-499, § 513(e)(2), added par. (4).  
 Subsecs. (e), (f). Pub. L. 99-499, § 513(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(1). Pub. L. 98-369, § 1019(a)(3), inserted “or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel”.

Subsec. (b)(2)(A). Pub. L. 98-369, § 1019(b)(2)(A), substituted “qualified fertilizer substance” for “qualified substance”.

Subsec. (b)(2)(B) to (D). Pub. L. 98-369, § 1019(b)(1), inserted “fertilizer” after “qualified” wherever appearing in subpar. (B), inserted “fertilizer” after “Qualified” in subpar. (C) heading and in text substituted “The term ‘qualified fertilizer use’ means any use in the manufacture or production of fertilizer or for direct application as a fertilizer” for “For purposes of this subsection, the term ‘qualified use’ means any use in the manufacture or production of a fertilizer”, and added subpar. (D).

Subsec. (b)(5), (6). Pub. L. 98-369, § 1019(a)(1), added pars. (5) and (6).

Subsec. (c). Pub. L. 98-369, § 1019(c), substituted “Except as provided in subsection (b), if” for “If”.

Subsec. (d)(2)(B). Pub. L. 98-369, § 1019(b)(2)(B), inserted “fertilizer” after “qualified” and struck out “, or sells such substance for use,” after “such substance”.

Subsec. (d)(3). Pub. L. 98-369, § 1019(a)(2), added par. (3).

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99-499, title V, to which it relates, see section 2001(e) of Pub. L. 100-647, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-499 effective Jan. 1, 1987, except as otherwise provided, see section 513(h) of Pub. L. 99-499, set out as a note under section 4661 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title X, § 1019(d), July 18, 1984, 98 Stat. 1024, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 211(a) of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96-510, which enacted this section].

“(2) WAIVER OF LIMITATION.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the date which for one year after the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendments) may, nevertheless, be made or allowed if claim therefor is filed on or before the date which for one year after the date of the enactment of this Act.”

### Subchapter C—Tax on Certain Imported Substances

Sec.  
 4671. Imposition of tax.

Sec.  
 4672. Definitions and special rules.

#### PRIOR PROVISIONS

A prior subchapter C related to tax on hazardous wastes, consisted of sections 4681 and 4682, prior to repeal by Pub. L. 99-499, title V, § 514(a)(1), Oct. 17, 1986, 100 Stat. 1767.

### § 4671. Imposition of tax

#### (a) General rule

There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

#### (b) Amount of tax

##### (1) In general

Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

##### (2) Rate where importer does not furnish information to Secretary

If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

##### (3) Authority to prescribe rate in lieu of paragraph (2) rate

The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

#### (c) Exemptions for substances taxed under sections 4611 and 4661

No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

#### (d) Tax-free sales, etc. for substances used as certain fuels or in the production of fertilizer or animal feed

Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on

certain chemicals used as fuel or in the production of fertilizer or animal feed).

#### (e) Termination

No tax shall be imposed under this section during any period during which the Hazardous Substance Superfund financing rate under section 4611 does not apply.

(Added Pub. L. 99-499, title V, §515(a), Oct. 17, 1986, 100 Stat. 1767; amended Pub. L. 99-509, title VIII, §8032(c)(3), Oct. 21, 1986, 100 Stat. 1958.)

#### AMENDMENTS

1986—Subsec. (e), Pub. L. 99-509 substituted “the Hazardous Substance Superfund financing rate under section 4611 does not apply” for “no tax is imposed under section 4611(a)”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99-509, set out as a note under section 4611 of this title.

#### EFFECTIVE DATE

Pub. L. 99-499, title V, §515(c), Oct. 17, 1986, 100 Stat. 1769, provided that: “The amendments made by this section [enacting this subchapter] shall take effect on January 1, 1989.”

#### STUDY AND REPORT

Pub. L. 99-499, title V, §515(d), Oct. 17, 1986, 100 Stat. 1769, provided that:

“(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

“(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

“(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

“(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.”

### § 4672. Definitions and special rules

#### (a) Taxable substance

For purposes of this subchapter—

##### (1) In general

The term “taxable substance” means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

##### (2) Determination of substances on list

A substance shall be listed under paragraph (1) if—

(A) the substance is contained in the list under paragraph (3), or

(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of U.S. Customs and Border Protection, that taxable chemicals constitute more than 50 percent of the weight (or more than 50 percent of the value) of the materials used

to produce such substance (determined on the basis of the predominant method of production).

If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed.

#### (3) Initial list of taxable substances

Cumene	Methylene chloride
Styrene	Polypropylene
Ammonium nitrate	Propylene glycol
Nickel oxide	Formaldehyde
Isopropyl alcohol	Acetone
Ethylene glycol	Acrylonitrile
Vinyl chloride	Methanol
Polyethylene resins, total	Propylene oxide
Polybutadiene	Polypropylene resins
Styrene-butadiene, latex	Ethylene oxide
Styrene-butadiene, snpf	Ethylene dichloride
Synthetic rubber, not containing fillers	Cyclohexane
Urea	Isophthalic acid
Ferronickel	Maleic anhydride
Ferrochromium nov 3 pct	Phthalic anhydride
Ferrochrome ov 3 pct. carbon	Ethyl methyl ketone
Unwrought nickel	Chloroform
Nickel waste and scrap	Carbon tetrachloride
Wrought nickel rods and wire	Chromic acid
Nickel powders	Hydrogen peroxide
Phenolic resins	Polystyrene homopolymer resins
Polyvinylchloride resins	Melamine
Polystyrene resins and copolymers	Acrylic and methacrylic acid resins
Ethyl alcohol for nonbeverage use	Vinyl resins
Ethylbenzene	Vinyl resins, NSPF.

#### (4) Modifications to list

The Secretary shall add to the list under paragraph (3) substances which meet either the weight or value tests of paragraph (2)(B) and may remove from such list only substances which meet neither of such tests.

#### (b) Other definitions

For purposes of this subchapter—

##### (1) Importer

The term “importer” means the person entering the taxable substance for consumption, use, or warehousing.

##### (2) Taxable chemicals; United States

The terms “taxable chemical” and “United States” have the respective meanings given such terms by section 4662(a).

#### (c) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671.

(Added Pub. L. 99-499, title V, §515(a), Oct. 17, 1986, 100 Stat. 1768; amended Pub. L. 100-647, title II, §2001(b), Nov. 10, 1988, 102 Stat. 3594; Pub. L. 114-125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210.)

# AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100-647, §2001(b)(2), inserted at end “If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed.”

Subsec. (a)(2)(B). Pub. L. 100-647, §2001(b)(1), inserted “(or more than 50 percent of the value)” after “weight”.

Subsec. (a)(4). Pub. L. 100-647, §2001(b)(3), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

“(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if ‘value’ were substituted for ‘weight’ therein.”

# CHANGE OF NAME

“Commissioner of U.S. Customs and Border Protection” substituted for “Commissioner of Customs” in subsec. (a)(2)(B) on authority of section 802(d)(2) of Pub. L. 114-125, set out as a note under section 211 of Title 6, Domestic Security.

# EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99-499, title V, to which it relates, see section 2001(e) of Pub. L. 100-647, set out as a note under section 56 of this title.

# EFFECTIVE DATE

Section effective Jan. 1, 1989, see section 515(c) of Pub. L. 99-499, set out as a note under section 4671 of this title.

# TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

# Subchapter D—Ozone-Depleting Chemicals, Etc.

Sec.	
4681.	Imposition of tax.
4682.	Definitions and special rules.

# § 4681. Imposition of tax

## (a) General rule

There is hereby imposed a tax on—

(1) any ozone-depleting chemical sold or used by the manufacturer, producer, or importer thereof, and

(2) any imported taxable product sold or used by the importer thereof.

## (b) Amount of tax

### (1) Ozone-depleting chemicals

#### (A) In general

The amount of the tax imposed by subsection (a) on each pound of ozone-depleting chemical shall be an amount equal to—

- (i) the base tax amount, multiplied by
- (ii) the ozone-depletion factor for such chemical.

#### (B) Base tax amount

The base tax amount for purposes of subparagraph (A) with respect to any sale or use during any calendar year after 1995 shall be \$5.35 increased by 45 cents for each year after 1995.

### (2) Imported taxable product

#### (A) In general

The amount of the tax imposed by subsection (a) on any imported taxable product shall be the amount of tax which would have been imposed by subsection (a) on the ozone-depleting chemicals used as materials in the manufacture or production of such product if such ozone-depleting chemicals had been sold in the United States on the date of the sale of such imported taxable product.

#### (B) Certain rules to apply

Rules similar to the rules of paragraphs (2) and (3) of section 4671(b) shall apply.

(Added Pub. L. 101-239, title VII, §7506(a), Dec. 19, 1989, 103 Stat. 2364; amended Pub. L. 101-508, title XI, §11203(c), Nov. 5, 1990, 104 Stat. 1388-422; Pub. L. 102-486, title XIX, §1931(a), Oct. 24, 1992, 106 Stat. 3029; Pub. L. 105-34, title XIV, §1432(c)(1), Aug. 5, 1997, 111 Stat. 1050.)

# PRIOR PROVISIONS

A prior section 4681, added Pub. L. 96-510, title II, §231(a), Dec. 11, 1980, 94 Stat. 2804, was contained in subchapter C of this chapter prior to repeal by Pub. L. 99-499, title V, §514(a)(1), (c), Oct. 17, 1986, 100 Stat. 1767, effective Oct. 1, 1983, with provision for waiver of statute of limitations on claims for overpayment.

# AMENDMENTS

1997—Subsec. (b)(1)(B). Pub. L. 105-34 added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: “The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical is the amount determined under the following table for such calendar year:

“Calendar year:	Base tax amount:
1993 .....	3.35
1994 .....	4.35
1995 .....	5.35.”

Subsec. (b)(1)(C). Pub. L. 105-34 struck out heading and text of subpar. (C). Text read as follows: “The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical during a calendar year after the last year specified in the table under subparagraph (B) applicable to such chemical shall be the base tax amount for such last year increased by 45 cents for each year after such last year.”

1992—Subsec. (b)(1)(B). Pub. L. 102-486 amended subpar. (B) generally, substituting present provisions for former provisions which provided for base tax amounts

in cl. (i) of initially listed chemicals for 1990 to 1994 and in cl. (ii) of newly listed chemicals for 1991 to 1995.

1990—Subsec. (b)(1)(B). Pub. L. 101-508 amended subpar. (B) generally, designating existing provision as cl. (i), inserting “with respect to any ozone-depleting chemical other than a newly listed chemical (as defined in section 4682(d)(3)(C))”, and adding cl. (ii).

Subsec. (b)(1)(C). Pub. L. 101-508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year after 1994 shall be the base tax amount for 1994 increased by 45 cents for each year after 1994.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, §1931(d), Oct. 24, 1992, 106 Stat. 3029, provided that: “The amendments made by this section [amending this section and section 4682 of this title] shall apply to taxable chemicals sold or used on or after January 1, 1993.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11203(e), Nov. 5, 1990, 104 Stat. 1388-423, provided that: “The amendments made by this section [amending this section and section 4682 of this title] shall take effect on January 1, 1991.”

#### EFFECTIVE DATE

Pub. L. 101-239, title VII, §7506(c), Dec. 19, 1989, 103 Stat. 2369, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall take effect on January 1, 1990.

“(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990.

“(3) NOTIFICATION OF CHANGES IN INTERNATIONAL AGREEMENTS.—The Secretary of the Treasury or his delegate shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of changes in the Montreal Protocol and of other international agreements to which the United States is a signatory relating to ozone-depleting chemicals.”

### § 4682. Definitions and special rules

#### (a) Ozone-depleting chemical

For purposes of this subchapter—

##### (1) In general

The term “ozone-depleting chemical” means any substance—

(A) which, at the time of the sale or use by the manufacturer, producer, or importer, is listed as an ozone-depleting chemical in the table contained in paragraph (2), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

##### (2) Ozone-depleting chemicals

Common name:	Chemical nomenclature:
CFC-11 .....	trichlorofluoromethane
CFC-12 .....	dichlorodifluoromethane
CFC-113 .....	trichlorotrifluoroethane
CFC-114 .....	1,2-dichloro-1,1,2,2-tetrafluoroethane
CFC-115 .....	chloropentafluoroethane
Halon-1211 .....	bromochlorodifluoromethane
Halon-1301 .....	bromotrifluoromethane
Halon-2402 .....	dibromotetrafluoroethane
Carbon tetrachloride	Tetrachloromethane
Methyl chloroform ....	1,1,1-trichloroethane

#### Common name: Chemical nomenclature:

CFC-13 .....	CF3Cl
CFC-111 .....	C2FC15
CFC-112 .....	C2F2C14
CFC-211 .....	C3FC17
CFC-212 .....	C3F2C16
CFC-213 .....	C3F3C15
CFC-214 .....	C3F4C14
CFC-215 .....	C3F5C13
CFC-216 .....	C3F6C12
CFC-217 .....	C3F7C11

#### (b) Ozone-depletion factor

For purposes of this subchapter, the term “ozone-depletion factor” means, with respect to an ozone-depleting chemical, the factor assigned to such chemical under the following table:

#### Ozone-depleting chemical: Ozone-depletion factor:

CFC-11 .....	1.0
CFC-12 .....	1.0
CFC-113 .....	0.8
CFC-114 .....	1.0
CFC-115 .....	0.6
Halon-1211 .....	3.0
Halon-1301 .....	10.0
Halon-2402 .....	6.0
Carbon tetrachloride .....	1.1
Methyl chloroform .....	0.1
CFC-13 .....	1.0
CFC-111 .....	1.0
CFC-112 .....	1.0
CFC-211 .....	1.0
CFC-212 .....	1.0
CFC-213 .....	1.0
CFC-214 .....	1.0
CFC-215 .....	1.0
CFC-216 .....	1.0
CFC-217 .....	1.0.

#### (c) Imported taxable product

For purposes of this subchapter—

##### (1) In general

The term “imported taxable product” means any product (other than an ozone-depleting chemical) entered into the United States for consumption, use, or warehousing if any ozone-depleting chemical was used as material in the manufacture or production of such product.

##### (2) De minimis exception

The term “imported taxable product” shall not include any product specified in regulations prescribed by the Secretary as using a de minimis amount of ozone-depleting chemicals as materials in the manufacture or production thereof. The preceding sentence shall not apply to any product in which any ozone-depleting chemical (other than methyl chloroform) is used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

#### (d) Exceptions

##### (1) Recycling

No tax shall be imposed by section 4681 on any ozone-depleting chemical which is diverted or recovered in the United States as part of a recycling process (and not as part of the original manufacturing or production process), or on any recycled Halon-1301 or recycled Halon-2402 imported from any country

which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer.

**(2) Use in further manufacture**

**(A) In general**

No tax shall be imposed by section 4681—

(i) on the use of any ozone-depleting chemical in the manufacture or production of any other chemical if the ozone-depleting chemical is entirely consumed in such use,

(ii) on the sale by the manufacturer, producer, or importer of any ozone-depleting chemical—

(I) for a use by the purchaser which meets the requirements of clause (i), or

(II) for resale by the purchaser to a second purchaser for a use by the second purchaser which meets the requirements of clause (i).

Clause (ii) shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any), meet such registration requirements as may be prescribed by the Secretary.

**(B) Credit or refund**

Under regulations prescribed by the Secretary, if—

(i) a tax under this subchapter was paid with respect to any ozone-depleting chemical, and

(ii) such chemical was used (and entirely consumed) by any person in the manufacture or production of any other chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4681.

**(3) Exports**

**(A) In general**

Except as provided in subparagraph (B), rules similar to the rules of section 4662(e) (other than section 4662(e)(2)(A)(ii)(II)) shall apply for purposes of this subchapter.

**(B) Limit on benefit**

**(i) In general**

The aggregate tax benefit allowable under subparagraph (A) with respect to ozone-depleting chemicals manufactured, produced, or imported by any person during a calendar year shall not exceed the sum of—

(I) the amount equal to the 1986 export percentage of the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to the maximum quantity of ozone-depleting chemicals permitted to be manufactured or produced by such person during such calendar year under regulations prescribed by the Environmental Protection Agency (other than chemicals with respect to which subclause (II) applies),

(II) the aggregate tax which would (but for this subsection and subsection (g)) be

imposed by this subchapter with respect to any additional production allowance granted to such person with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year by the Environmental Protection Agency under 40 CFR Part 82 (as in effect on September 14, 1989), and

(III) the aggregate tax which was imposed by this subchapter with respect to ozone-depleting chemicals imported by such person during the calendar year.

**(ii) 1986 export percentage**

A person's 1986 export percentage is the percentage equal to the ozone-depletion factor adjusted pounds of ozone-depleting chemicals manufactured or produced by such person during 1986 which were exported during 1986, divided by the ozone-depletion factor adjusted pounds of all ozone-depleting chemicals manufactured or produced by such person during 1986. The percentage determined under the preceding sentence shall be computed by taking into account the sum of such person's direct 1986 exports (as determined by the Environmental Protection Agency) and such person's indirect 1986 exports (as allocated to such person by such Agency in determining such person's consumption and production rights for ozone-depleting chemicals).

**(C) Separate application of limit for newly listed chemicals**

**(i) In general**

Subparagraph (B) shall be applied separately with respect to newly listed chemicals and other chemicals.

**(ii) Application to newly listed chemicals**

In applying subparagraph (B) to newly listed chemicals—

(I) subparagraph (B) shall be applied by substituting "1989" for "1986" each place it appears, and

(II) clause (i)(II) thereof shall be applied by substituting for the regulations referred to therein any regulations (whether or not prescribed by the Secretary) which the Secretary determines are comparable to the regulations referred to in such clause with respect to newly listed chemicals.

**(iii) Newly listed chemical**

For purposes of this subparagraph, the term "newly listed chemical" means any substance which appears in the table contained in subsection (a)(2) below Halon-2402.

**(e) Other definitions**

For purposes of this subchapter—

**(1) Importer**

The term "importer" means the person entering the article for consumption, use, or warehousing.

**(2) United States**

The term "United States" has the meaning given such term by section 4612(a)(4).



**(f) Special rules****(1) Fractional parts of a pound**

In the case of a fraction of a pound, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole pound.

**(2) Disposition of revenues from Puerto Rico and the Virgin Islands**

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter.

**(g) Chemicals used as propellants in metered-dose inhalers****(1) Exemption from tax****(A) In general**

No tax shall be imposed by section 4681 on—

- (i) any use of any substance as a propellant in metered-dose inhalers, or
- (ii) any qualified sale by the manufacturer, producer, or importer of any substance.

**(B) Qualified sale**

For purposes of subparagraph (A), the term “qualified sale” means any sale by the manufacturer, producer, or importer of any substance—

- (i) for use by the purchaser as a propellant in metered dose inhalers, or
- (ii) for resale by the purchaser to a 2d purchaser for such use by the 2d purchaser.

The preceding sentence shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any) meet such registration requirements as may be prescribed by the Secretary.

**(2) Overpayments**

If any substance on which tax was paid under this subchapter is used by any person as a propellant in metered-dose inhalers, credit or refund without interest shall be allowed to such person in an amount equal to the tax so paid. Amounts payable under the preceding sentence with respect to uses during the taxable year shall be treated as described in section 34(a) for such year unless claim thereof has been timely filed under this paragraph.

**(h) Imposition of floor stocks taxes****(1) In general****(A) In general**

If, on any tax-increase date, any ozone-depleting chemical is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax.

**(B) Amount of tax**

The amount of the tax imposed by subparagraph (A) shall be the excess (if any) of—

- (i) the tax which would be imposed under section 4681 on such substance if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred on the tax-increase date, over

- (ii) the prior tax (if any) imposed by this subchapter on such substance.

**(C) Tax-increase date**

For purposes of this paragraph, the term “tax-increase date” means January 1 of any calendar year.

**(2) Due date**

The taxes imposed by this subsection on January 1 of any calendar year shall be paid on or before June 30 of such year.

**(3) Application of other laws**

All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4681 shall apply to the floor stocks taxes imposed by this subsection.

(Added Pub. L. 101-239, title VII, §7506(a), Dec. 19, 1989, 103 Stat. 2365; amended Pub. L. 101-508, title XI, §§11203(a), (b), (d), 11701(g), Nov. 5, 1990, 104 Stat. 1388-421, 1388-422, 1388-508; Pub. L. 102-486, title XIX, §§1931(b), (c), 1932(a)-(c), Oct. 24, 1992, 106 Stat. 3029-3031; Pub. L. 104-188, title I, §1803(a)(1), (b), Aug. 20, 1996, 110 Stat. 1892, 1893; Pub. L. 105-34, title IX, §903(a), title XIV, §1432(c)(2), Aug. 5, 1997, 111 Stat. 873, 1051; Pub. L. 113-295, div. A, title II, §221(a)(107), Dec. 19, 2014, 128 Stat. 4053.)

**PRIOR PROVISIONS**

A prior section 4682, added Pub. L. 96-510, title II, §231(a), Dec. 11, 1980, 94 Stat. 2804, was contained in subchapter C of this chapter, prior to repeal by Pub. L. 99-499, title V, §514(a)(1), (c), Oct. 17, 1986, 100 Stat. 1767, effective Oct. 1, 1983, with provision for waiver of statute of limitations on claims for overpayment.

**AMENDMENTS**

2014—Subsec. (h). Pub. L. 113-295 redesignated pars. (2) to (4) as (1) to (3), respectively, in par. (1), as so redesignated, substituted “In general” for “Other tax-increase dates” in heading and struck out “after 1991” after “calendar year” in subpar. (C), and struck out former par. (1), which read as follows: “On any ozone-depleting chemical which on January 1, 1990, is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax in an amount equal to the tax which would be imposed by section 4681 on such chemical if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred during 1990.”

1997—Subsec. (d)(1). Pub. L. 105-34, §903(a), substituted “recycled Halon-1301 or recycled Halon-2402” for “recycled halon”.

Subsec. (g). Pub. L. 105-34, §1432(c)(2), amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (5) relating to taxes imposed during 1990 to 1993 on halons, chemicals used in rigid foam insulation, and methyl chloroform and taxes imposed on chemicals used as propellants in metered-dose inhalers.

1996—Subsec. (d)(1). Pub. L. 104-188, §1803(a)(1), inserted before period at end “, or on any recycled halon imported from any country which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer”.

Subsec. (g)(4). Pub. L. 104-188, §1803(b), amended par. (4) generally, substituting provisions relating to chemicals used as propellants in metered-dose inhalers for provisions relating to chemicals used for sterilizing medical instruments and as propellants in metered-dose inhalers, including provisions relating to rate of tax, overpayments, and applicable period.

1992—Subsec. (g)(2)(A). Pub. L. 102-486, §1932(a), in table, for sales or use during 1993, decreased applicable

percentages from 3.3, 1.0, and 1.6 to 2.49, 0.75, and 1.24 in the case of Halon-1211, Halon-1301, and Halon-2402, respectively, and struck out applicable percentages for sales or use during 1991 and 1992.

Subsec. (g)(2)(B). Pub. L. 102-486, §1931(b), in table decreased applicable percentage in the case of sales or use in 1993 from 10 to 7.46.

Subsec. (g)(4), (5). Pub. L. 102-486, §1932(b), (c), added pars. (4) and (5).

Subsec. (h)(2)(C). Pub. L. 102-486, §1931(c), substituted “any calendar year after 1991” for “1991, 1992, 1993, and 1994”.

1990—Subsecs. (a)(2), (b). Pub. L. 101-508, §11203(a), inserted items for “Carbon tetrachloride” through “CFC-217” in tables.

Subsec. (c)(2). Pub. L. 101-508, §11203(d)(1), inserted “(other than methyl chloroform)”.

Subsec. (d)(3)(B)(i). Pub. L. 101-508, §11701(g)(1), substituted “, produced, or imported” for “or produced” in introductory provisions.

Subsec. (d)(3)(B)(i)(I). Pub. L. 101-508, §11701(g)(2), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “the amount equal to the 1986 export percentage of the aggregate tax imposed by this subchapter with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year (other than chemicals with respect to which subclause (II) applies), and”.

Subsec. (d)(3)(B)(i)(II). Pub. L. 101-508, §11701(g)(3), substituted “tax which would (but for this subsection and subsection (g)) be imposed” for “tax imposed”.

Subsec. (d)(3)(B)(i)(III). Pub. L. 101-508, §11701(g)(4), added subcl. (III).

Subsec. (d)(3)(B)(ii). Pub. L. 101-508, §11701(g)(5), substituted last sentence for former last sentence which read as follows: “The percentage determined under the preceding sentence shall be based on data published by the Environmental Protection Agency.”

Subsec. (d)(3)(C). Pub. L. 101-508, §11203(b), added subpar. (C).

Subsec. (h)(3). Pub. L. 101-508, §11203(d)(2), substituted “June 30” for “April 1”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §903(b), Aug. 5, 1997, 111 Stat. 873, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1803(c), Aug. 20, 1996, 110 Stat. 1893, provided that:

“(1) RECYCLED HALON.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a)(1) [amending this section] shall take effect on January 1, 1997.

“(B) HALON-1211.—In the case of Halon-1211, the amendment made by subsection (a)(1) shall take effect on January 1, 1998.

“(2) METERED-DOSE INHALERS.—The amendment made by subsection (b) [amending this section] shall take effect on the 7th day after the date of the enactment of this Act [Aug. 20, 1996].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1931(b), (c) of Pub. L. 102-486 applicable to taxable chemicals sold or used on or after Jan. 1, 1993, see section 1931(d) of Pub. L. 102-486, set out as a note under section 4681 of this title.

Pub. L. 102-486, title XIX, §1932(d), Oct. 24, 1992, 106 Stat. 3031, provided that: “The amendments made by this section [amending this section] shall apply to sales and uses on or after January 1, 1993.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11203(a), (b), and (d) of Pub. L. 101-508 effective Jan. 1, 1991, see section 11203(e) of Pub. L. 101-508, set out as a note under section 4681 of this title.

Amendment by section 11701(g) of Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

#### CERTIFICATION SYSTEM

Pub. L. 104-188, title I, §1803(a)(2), Aug. 20, 1996, 110 Stat. 1892, provided that: “The Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall develop a certification system to ensure compliance with the recycling requirement for imported halon under section 4682(d)(1) of the Internal Revenue Code of 1986, as amended by paragraph (1).”

#### DEPOSITS FOR FIRST QUARTER OF 1991

Pub. L. 101-508, title XI, §11203(f), Nov. 5, 1990, 104 Stat. 1388-423, provided that: “No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986 on any substance treated as an ozone-depleting chemical by reason of the amendment made by subsection (a)(1) [amending this section] shall be required to be made before April 1, 1991.”

### CHAPTER 39—REGISTRATION-REQUIRED OBLIGATIONS

Sec.

4701. Tax on issuer of registration-required obligation not in registered form.

#### PRIOR PROVISIONS

The provisions of a prior chapter 39, Regulatory Taxes, were set out as:

Subchapter A, Narcotic Drugs and Marihuana, comprising sections 4701 to 4707, 4711 to 4716, 4721 to 4726, 4731 to 4736, 4741 to 4746, 4751 to 4757, 4761, 4762, and 4771 to 4776.

Subchapter B, White phosphorus matches, comprising sections 4801 to 4806.

Subchapter C, Adulterated butter and filled cheese, comprising sections 4811 to 4819, 4821, 4822, 4826, 4831 to 4836, 4841, 4842, and 4846.

Subchapter D, Cotton futures, comprising sections 4851 to 4854, 4861 to 4865, and 4871 to 4877.

Subchapter E, Circulation other than of national banks, comprising sections 4881 to 4886.

Subchapter F, Silver bullion, comprising sections 4891 to 4897.

Prior sections 4701 to 4897 were based on act Aug. 16, 1954, ch. 736, 68A Stat. 549-592, as amended.

Sections 4701-4776 were repealed by Pub. L. 91-513, title III, §1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292. See section 801 et seq. of Title 21, Food and Drugs.

Sections 4801-4826, 4851-4873, and 4875-4886 were repealed by Pub. L. 94-455, title XIX, §§1904(a)(16)-(18), 1952(b), Oct. 4, 1976, 90 Stat. 1814, 1841.

Sections 4831-4834 and 4836-4846 were repealed by Pub. L. 93-490, §3(a)(1), Oct. 26, 1974, 88 Stat. 1466.

Section 4835 was repealed by Pub. L. 85-881, §1(b)(1), Sept. 2, 1958, 72 Stat. 1704.

Section 4874 was repealed by Pub. L. 91-452, title II, §231(a), Oct. 15, 1970, 84 Stat. 930.

Sections 4891-4897 were repealed by Pub. L. 88-36, title II, §201(a), June 4, 1963, 77 Stat. 54.

#### AMENDMENTS

1982—Pub. L. 97-248, title III, §310(b)(4)(A), Sept. 3, 1982, 96 Stat. 597, added chapter heading and section analysis.

**§ 4701. Tax on issuer of registration-required obligation not in registered form**

**(a) Imposition of tax**

In the case of any person who issues a registration-required obligation which is not in registered form, there is hereby imposed on such person on the issuance of such obligation a tax in an amount equal to the product of—

- (1) 1 percent of the principal amount of such obligation, multiplied by
- (2) the number of calendar years (or portions thereof) during the period beginning on the date of issuance of such obligation and ending on the date of maturity.

**(b) Definitions**

For purposes of this section—

**(1) Registration-required obligation**

**(A) In general**

The term “registration-required obligation” has the same meaning as when used in section 163(f), except that such term shall not include any obligation which—

- (i) is required to be registered under section 149(a), or
- (ii) is described in subparagraph (B).

**(B) Certain obligations not included**

An obligation is described in this subparagraph if—

- (i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,
- (ii) interest on such obligation is payable only outside the United States and its possessions, and
- (iii) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

**(2) Registered form**

The term “registered form” has the same meaning as when used in section 163(f).

(Added Pub. L. 97-248, title III, §310(b)(4)(A), Sept. 3, 1982, 96 Stat. 598; amended Pub. L. 99-514, title XIII, §1301(j)(5), Oct. 22, 1986, 100 Stat. 2657; Pub. L. 111-147, title V, §502(e), Mar. 18, 2010, 124 Stat. 108.)

**AMENDMENTS**

2010—Subsec. (b)(1). Pub. L. 111-147 amended par. (1) generally. Prior to amendment, text read as follows: “The term ‘registration-required obligation’ has the same meaning as when used in section 163(f), except that such term shall not include any obligation required to be registered under section 149(a).”

1986—Subsec. (b)(1). Pub. L. 99-514 substituted “section 149(a)” for “section 103(j)”.

**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111-147, set out as a note under section 149 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided,

see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

**EFFECTIVE DATE**

Section applicable to obligations issued after Dec. 31, 1982, with an exception for certain warrants, see section 310(d)(1), (3) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendment note under section 103 of this title.

**CHAPTER 40—GENERAL PROVISIONS  
RELATING TO OCCUPATIONAL TAXES**

Sec.

- |       |   |
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| 4901. | Payment of tax.   |
| 4902. | Liability of partners.  |
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| 4905. | Liability in case of death or change of location.                         |
| 4906. | Application of State laws.  |
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**§ 4901. Payment of tax**

**(a) Condition precedent to carrying on certain business**

No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering) until he has paid the special tax therefor.

**(b) Computation**

All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(Aug. 16, 1954, ch. 736, 68A Stat. 593; Pub. L. 89-44, title IV, §405(b), June 21, 1965, 79 Stat. 149; Pub. L. 91-513, title III, §1102(a), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94-455, title XIX, §1904(a)(19), Oct. 4, 1976, 90 Stat. 1814; Pub. L. 95-600, title V, §521(c)(2), Nov. 6, 1978, 92 Stat. 2884.)

**AMENDMENTS**

1978—Subsec. (a). Pub. L. 95-600 struck out “or 4461(a)(1) (coin-operated gaming devices)” after “(wagering)”.

1976—Subsec. (c). Pub. L. 94-455 struck out subsec. (c) which provided that all special taxes should be paid by stamp and made reference to subtitle F for authority of the Secretary to make assessments where special taxes have not been duly paid by stamp.

1970—Subsec. (a). Pub. L. 91-513 struck out references to tax imposed by sections 4721 (narcotic drugs) and 4751 (marihuana).

1965—Subsec. (a). Pub. L. 89-44 substituted “4461(a)(1)” for “4461(2)”.

**EFFECTIVE DATE OF 1978 AMENDMENT**

Amendment by Pub. L. 95-600 applicable with respect to years beginning after June 30, 1980, see section 521(d)(2) of Pub. L. 95-600, set out as a note under section 4402 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct.

4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89-44, set out in part as a note under section 4402 of this title.

#### SAVINGS PROVISION

Prosecution for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

#### PERSONS ENGAGED IN ACTIVITIES ON DECEMBER 1, 1974, REQUIRING PAYMENT OF WAGERING TAX

Person on Dec. 1, 1974, engaging in an activity making him liable for payment of tax imposed by section 4411 of this title (as in effect on such date) to be treated as commencing such activity on such date for purposes of this section and section 4411 of this title, see section 3(d)(2) of Pub. L. 93-499, set out as a note under section 4411 of this title.

### § 4902. Liability of partners

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 593.)

### § 4903. Liability in case of business in more than one location

The payment of the special tax imposed, other than the tax imposed by section 4411, shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this subtitle, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

(Aug. 16, 1954, ch. 736, 68A Stat. 593.)

### § 4904. Liability in case of different businesses of same ownership and location

Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

### § 4905. Liability in case of death or change of location

#### (a) Requirements

When any person who has paid the special tax for any trade or business dies, his spouse or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary, under regulations to be prescribed by the Secretary.

#### (b) Registration

**For registration in case of wagering, see section 4412.**

(Aug. 16, 1954, ch. 736, 68A Stat. 594; Pub. L. 89-44, title IV, § 405(c), June 21, 1965, 79 Stat. 149; Pub. L. 91-513, title III, § 1102(b), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94-455, title XIX, §§ 1904(a)(20), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1814, 1816, 1834.)

#### AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, §§ 1904(a)(20), 1906(b)(13)(A), substituted “spouse or child” for “wife or child” and struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (b). Pub. L. 94-455, § 1904(b)(8)(A), among other changes, struck out reference to section 4804(d) for registration in case of white phosphorous matches and references to subtitle F for other provisions relating to registration.

1970—Subsec. (b)(1). Pub. L. 91-513 struck out references to narcotics and marihuana and to sections 4722 and 4753.

1965—Subsec. (b)(1). Pub. L. 89-44 struck out “playing cards,” after “wagering,” and “4455,” after “4412.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VII, § 701(c)(2), June 21, 1965, 79 Stat. 157, provided in part that: “The amendments made by section 402 [repealing sections 4451 to 4457 of this title] (relating to playing cards) and by subsection (c) of section 405 [amending this section] shall apply on and after the day after the date of the enactment of this Act [June 21, 1965].”

#### SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to

be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

#### § 4906. Application of State laws

The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

#### § 4907. Federal agencies or instrumentalities

Any special tax imposed by this subtitle, except the tax imposed by section 4411, shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

### CHAPTER 41—PUBLIC CHARITIES

Sec.

- 4911. Tax on excess expenditures to influence legislation.
- 4912. Tax on disqualifying lobbying expenditures of certain organizations.

#### AMENDMENTS

1987—Pub. L. 100-203, title X, §10714(d), Dec. 22, 1987, 101 Stat. 1330-471, added item 4912.

#### PRIOR PROVISIONS

The provisions of a prior chapter 41, Interest Equalization Tax, were set out as follows:

Subchapter A, Acquisitions of foreign stock and debt obligations, comprising sections 4911 to 4920.

Subchapter B, Acquisition by commercial banks, comprising section 4931.

Prior sections 4911 to 4922 and 4931 were repealed by Pub. L. 94-455, §1904(a)(21)(A), Oct. 4, 1976, 90 Stat. 1814, effective with respect to acquisitions of stock and debt obligations made after June 30, 1974. See section 1904(a)(21)(B), set out as an Effective Date of Repeal of Prior Provisions note below.

The subject matter of the prior provisions is as follows:

Section 4911, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 809; amended Pub. L. 89-243, §§2, 3(a)(1), (b), Oct. 9, 1965, 79 Stat. 954; Pub. L. 90-59, §§2, 3(a), July 31, 1967, 81 Stat. 145; Pub. L. 91-50, Aug. 2, 1969, 83 Stat. 86; Pub. L. 91-65, §2, Aug. 25, 1969, 83 Stat. 105; Pub. L. 91-128, §§2, 3, Nov. 26, 1969, 83 Stat. 261, 262; Pub. L. 92-9, §2, Apr. 1, 1971, 85 Stat. 13; Pub. L. 93-17, §2, Apr. 10, 1973, 87 Stat. 12, imposed a tax on each acquisition by a United States person of stock of a foreign issuer or a debt obligation of a foreign obligor, if such obligation had a period remaining to maturity of 1 year or more and provided for modification of tax rate by executive order, rate tables, rates during interim period, rules and regulations, persons liable for tax, and termination date, that no tax shall be imposed on any acquisition made after June 30, 1974.

Section 4912, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 810; amended Pub. L. 89-243, §4(m)(3), Oct. 9, 1965, 79 Stat. 963; Pub. L. 90-59, §5(a)(1), July 31, 1967, 81

Stat. 157; Pub. L. 91-128, §4(a)(1), Nov. 26, 1969, 83 Stat. 263; Pub. L. 92-9, §3(a)(1), Apr. 1, 1971, 85 Stat. 14; Pub. L. 93-17, §3(e), Apr. 10, 1973, 87 Stat. 17, defined term “acquisition” and provided special rules to be applied to certain transfers to foreign trusts, foreign corporations and partnerships, foreign branches, acquisitions from domestic corporations or partnerships formed or availed of to obtain funds for foreign issuer or obligor, and reorganization exchanges.

Section 4913, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 812, imposed general and special limitations on tax on certain acquisitions relating to stock or debt obligations acquired by surrender, extensions, renewals, and exercises, transfers which are deemed acquisitions and acquisitions by certain domestic corporations and partnerships.

Section 4914, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 813; amended Pub. L. 89-44, title IV, §405(d), June 21, 1965, 79 Stat. 149; Pub. L. 89-243, §§3(a)(2), (3), 4(a)(1)-(3), (b)-(f)(2), (g), (h)(1), Oct. 9, 1965, 79 Stat. 954, 956-960; Pub. L. 89-809, title II, §§213(a), (b)(1), 214(a), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90-59, §5(b)(1), (c)(1), (2), (d)(1), (e)(1), (f)(1), July 31, 1967, 81 Stat. 157, 158; Pub. L. 91-128, §4(b)(1), (c)(1), (2), (i)(1), (2), Nov. 26, 1969, 83 Stat. 263, 264, 268; Pub. L. 92-9, §3(b)(1), (2), (c)(1), (d)(1), (2), Apr. 1, 1971, 85 Stat. 15-17; Pub. L. 93-17, §3(f), Apr. 10, 1973, 87 Stat. 17, provided exclusions for certain acquisitions including: transactions not considered acquisitions; export credit, etc., transactions; loans to assure raw materials sources; acquisitions by insurance companies doing business in foreign countries; acquisitions by certain tax-exempt organizations such as labor, fraternal, and similar organizations having foreign branches or chapters; sale or liquidation of foreign subsidiary or sale of foreign branch; certain debt obligations secured by United States mortgages, etc.; acquisitions of stock of foreign issuers investing exclusively in the United States, and loss of entitlement to exclusion in case of certain subsequent transfers or acquisitions of stock or debt obligations in connection with nationalization, expropriation, etc.

Section 4915, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 824; amended Pub. L. 90-59, §5(h)(3), July 31, 1967, 81 Stat. 163; Pub. L. 91-128, §4(e)(3), Nov. 26, 1969, 83 Stat. 267; Pub. L. 92-9, §3(e)(1), Apr. 1, 1971, 85 Stat. 17; Pub. L. 93-17, §3(g)(1), Apr. 10, 1973, 87 Stat. 18, related to exclusions for direct investments and provided for excluded acquisitions, overpayment with respect to certain taxable acquisitions, special rule for government-controlled enterprises, exception for foreign corporations or partnerships formed or availed of for tax avoidance, exception for acquisitions made with intent to sell to United States persons, and special rule for investments in certain lending and financial corporations.

Section 4916, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 827; amended Pub. L. 89-243, §4(i), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90-59, §5(g)(1), July 31, 1967, 81 Stat. 159; Pub. L. 92-9, §3(b)(3), Apr. 1, 1971, 85 Stat. 16; Pub. L. 93-17, §3(b), Apr. 10, 1973, 87 Stat. 13, related to exclusion for investment in less developed countries, provided special rules applicable to such investments, subsequent tax liability in certain cases, the repeal of exclusion for issues after Jan. 29, 1973, in the case of less developed country shipping companies, and defined term “less developed country”.

Section 4917, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 830; amended Pub. L. 89-243, §4(j), (k), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90-59, §5(h)(1), July 31, 1967, 81 Stat. 159, related to exclusion for original or new issues where required for international monetary stability.

Section 4918, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 831; amended Pub. L. 89-809, title II, §213(b)(2), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90-59, §4(a), July 31, 1967, 81 Stat. 148; Pub. L. 90-73, §2(a)-(c), Aug. 29, 1967, 81 Stat. 175, 176; Pub. L. 93-17, §3(h)(1), Apr. 10, 1973, 87 Stat. 18, related to exemption for prior American ownership and compliance, proof of such ownership or compliance, issuance of IET clean confirmation by participating firm, sales effected by participating firms in

connection with exempt acquisitions, filing of transition inventory, transfer of custody certificate, certain debt obligations arising out of loans to assure raw material sources, regulations, and definitions of “participating firm,” and “participating custodian”.

Section 4919, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 833; amended Pub. L. 89-243, §4(1), Oct. 9, 1965, 79 Stat. 961; Pub. L. 90-59, §5(i)(1), (2), July 31, 1967, 81 Stat. 159, 160; Pub. L. 91-128, §4(d)(1), Nov. 26, 1969, 83 Stat. 264; Pub. L. 92-9, §3(f)(1), (2), Apr. 1, 1971, 85 Stat. 20; Pub. L. 93-17, §3(i)(1), Apr. 10, 1973, 87 Stat. 19, related to credit or refund on sales by underwriters and dealers to foreign persons, evidence needed to support such credit or refund, and defined terms “underwriter”, “dealer”, and “persons other than United States persons”.

Section 4920, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 835; amended Pub. L. 89-243, §§3(a)(4), 4(m)(1), (2)(A), (n), Oct. 9, 1965, 79 Stat. 954, 961-963; Pub. L. 90-59, §§4(f), 5(j)-(k)(2), July 31, 1967, 81 Stat. 156, 160-163; Pub. L. 91-128, §4(e)(1), (2), (i)(3), Nov. 26, 1969, 83 Stat. 264, 269; Pub. L. 92-9, §3(e)(2), (3), (g)(1), (h)(1), Apr. 1, 1971, 85 Stat. 18, 20, 21; Pub. L. 93-17, §3(g)(2)(j), Apr. 10, 1973, 87 Stat. 18, 19, related to definitions and special rules.

Section 4921, added Pub. L. 92-9, §3(i)(1), Apr. 1, 1971, 85 Stat. 21, related to standby authority of the President to impose tax on debt obligations of foreign obligors having a period remaining to maturity of less than 1 year and provided that such authority may be extended by Executive order.

Section 4922, added Pub. L. 93-17, §3(d)(1), Apr. 10, 1973, 87 Stat. 15, related to exclusion for certain issues to finance new or additional direct investment in the United States, qualification for exclusion, and loss of entitlement to exclusion by subsequent noncompliance.

Section 4931, added Pub. L. 88-563, §2(a), Sept. 2, 1964, 78 Stat. 839; amended Pub. L. 89-243, §§3(e)(1), 4(a)(4), (o), Oct. 9, 1965, 79 Stat. 955, 956, 964; Pub. L. 89-809, title II, §215(a), Nov. 13, 1966, 80 Stat. 1587; Pub. L. 90-59, §3(b)(1), July 31, 1967, 81 Stat. 145, related to the standby authority of the President to impose, by Executive order, tax on acquisitions by commercial banks of debt obligations of foreign obligors, made provision for exclusions concerning export loans, foreign currency loans by foreign branches, preexisting commitments, and provided for prescription of regulations by the Secretary.

#### EFFECTIVE DATE OF REPEAL OF PRIOR PROVISIONS

Pub. L. 94-455, title XIX, §1904(a)(21)(B), Oct. 4, 1976, 90 Stat. 1814, provided that: “The repeal made by subparagraph (A) [repealing sections 4911 through 4922 and section 4931 of this title] shall apply with respect to acquisitions of stock and debt obligations made after June 30, 1974.”

### § 4911. Tax on excess expenditures to influence legislation

#### (a) Tax imposed

##### (1) In general

There is hereby imposed on the excess lobbying expenditures of any organization to which this section applies a tax equal to 25 percent of the amount of the excess lobbying expenditures for the taxable year.

##### (2) Organizations to which this section applies

This section applies to any organization with respect to which an election under section 501(h) (relating to lobbying expenditures by public charities) is in effect for the taxable year.

#### (b) Excess lobbying expenditures

For purposes of this section, the term “excess lobbying expenditures” means, for a taxable year, the greater of—

(1) the amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying nontaxable amount for such organization for such taxable year, or

(2) the amount by which the gross roots expenditures made by the organization during the taxable year exceed the gross roots nontaxable amount for such organization for such taxable year.

#### (c) Definitions

For purposes of this section—

##### (1) Lobbying expenditures

The term “lobbying expenditures” means expenditures for the purpose of influencing legislation (as defined in subsection (d)).

##### (2) Lobbying nontaxable amount

The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) \$1,000,000 or (B) the amount determined under the following table:

If the exempt purpose expenditures are—	The lobbying nontaxable amount is—
Not over \$500,000 .....	20 percent of the exempt purpose expenditures.
Over \$500,000 but not over \$1,000,000.	\$100,000, plus 15 percent of the excess of the exempt purpose expenditures over \$500,000.
Over \$1,000,000 but not over \$1,500,000.	\$175,000 plus 10 percent of the excess of the exempt purpose expenditures over \$1,000,000.
Over \$1,500,000 .....	\$225,000 plus 5 percent of the excess of the exempt purpose expenditures over \$1,500,000.

##### (3) Grass roots expenditures

The term “grass roots expenditures” means expenditures for the purpose of influencing legislation (as defined in subsection (d) without regard to paragraph (1)(B) thereof).

##### (4) Grass roots nontaxable amount

The grass roots nontaxable amount for any organization for any taxable year is 25 percent of the lobbying nontaxable amount (determined under paragraph (2)) for such organization for such taxable year.

#### (d) Influencing legislation

##### (1) General rule

Except as otherwise provided in paragraph (2), for purposes of this section, the term “influencing legislation” means—

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

##### (2) Exceptions

For purposes of this section, the term “influencing legislation”, with respect to an organization, does not include—

(A) making available the results of non-partisan analysis, study, or research;

(B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3); and

(E) any communication with a governmental official or employee, other than—

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

### **(3) Communications with members**

(A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate as provided in paragraph (1)(B) shall be treated as a communication described in paragraph (1)(B).

(B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in paragraph (1)(A).

### **(e) Other definitions and special rules**

For purposes of this section—

#### **(1) Exempt purpose expenditures**

##### **(A) In general**

The term “exempt purpose expenditures” means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by such organization to accomplish purposes described in section 170(c)(2)(B) (relating to religious, charitable, educational, etc., purposes).

##### **(B) Certain amounts included**

The term “exempt purpose expenditures” includes—

(i) administrative expenses paid or incurred for purposes described in section 170(c)(2)(B), and

(ii) amounts paid or incurred for the purpose of influencing legislation (whether or not for purposes described in section 170(c)(2)(B)).

##### **(C) Certain amounts excluded**

The term “exempt purpose expenditures” does not include amounts paid or incurred to or for—

(i) a separate fundraising unit of such organization, or

(ii) one or more other organizations, if such amounts are paid or incurred primarily for fundraising.

### **(2) Legislation**

The term “legislation” includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

### **(3) Action**

The term “action” is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

### **(4) Depreciation, etc., treated as expenditures**

In computing expenditures paid or incurred for the purpose of influencing legislation (within the meaning of subsection (b)(1) or (b)(2)) or exempt purpose expenditures (as defined in paragraph (1)), amounts properly chargeable to capital account shall not be taken into account. There shall be taken into account a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization. Such allowance shall be computed only on the basis of the straight-line method of depreciation. For purposes of this section, a determination of whether an amount is properly chargeable to capital account shall be made on the basis of the principles that apply under subtitle A to amounts which are paid or incurred in a trade or business.

### **(f) Affiliated organizations**

#### **(1) In general**

Except as otherwise provided in paragraph (4), if for a taxable year two or more organizations described in section 501(c)(3) are members of an affiliated group of organizations as defined in paragraph (2), and an election under section 501(h) is effective for at least one such organization for such year, then—

(A) the determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits of section 501(h)(1) have been exceeded shall be made as though such affiliated group is one organization,

(B) if such group has excess lobbying expenditures, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which has excess lobbying expenditures in an amount which equals such organization's proportionate share of such group's excess lobbying expenditures,

(C) if the expenditure limits of section 501(h)(1) are exceeded, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which is not described in section 501(c)(3) by reason of the application of 501(h), and

(D) subparagraphs (C) and (D) of subsection (d)(2), paragraph (3) or subsection

(d), and clause (i) of subsection (e)(1)(C) shall be applied as if such affiliated group were one organization.

## (2) Definition of affiliation

For purposes of paragraph (1), two organizations are members of an affiliated group of organizations but only if—

(A) the governing instrument of one such organization requires it to be bound by decisions of the other organization on legislative issues, or

(B) the governing board of one such organization includes persons who—

(i) are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

## (3) Different taxable years

If members of an affiliated group of organizations have different taxable years, their expenditures shall be computed for purposes of this section in a manner to be prescribed by regulations promulgated by the Secretary.

## (4) Limited control

If two or more organizations are members of an affiliated group of organizations (as defined in paragraph (2) without regard to subparagraph (B) thereof), no two members of such affiliated group are affiliated (as defined in paragraph (2) without regard to subparagraph (A) thereof), and the governing instrument of no such organization requires it to be bound by decisions of any of the other such organizations on legislative issues other than as to action with respect to Acts, bills, resolutions, or similar items by the Congress, then—

(A) in the case of any organization whose decisions bind one or more members of such affiliated group, directly or indirectly, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization has paid or incurred those amounts paid or incurred by such members of such affiliated group to influence legislation with respect to Acts, bills, resolutions, or similar items by the Congress, and

(B) in the case of any organization to which subparagraph (A) does not apply, but which is a member of such affiliated group, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization is not a member of such affiliated group.

(Added Pub. L. 94-455, title XIII, §1307(b), Oct. 4, 1976, 90 Stat. 1723; amended Pub. L. 95-600, title VII, §703(g)(1), Nov. 6, 1978, 92 Stat. 2940.)

## AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95-600 substituted “exempt purpose expenditures” for “proposed expenditures” in heading of table.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

## § 4912. Tax on disqualifying lobbying expenditures of certain organizations

### (a) Tax on organization

If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

### (b) On management

If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

### (c) Organizations to which section applies

#### (1) In general

Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

#### (2) Exceptions

This section shall not apply to any organization—

(A) to which an election under section 501(h) applies,

(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

(C) which is a private foundation.

### (d) Definitions

#### (1) Lobbying expenditures

The term “lobbying expenditure” means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

#### (2) Organization manager

The term “organization manager” has the meaning given to such term by section 4955(f)(2).

#### (3) Joint and several liability

If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection.

(Added Pub. L. 100-203, title X, §10714(a), Dec. 22, 1987, 101 Stat. 1330-470.)



## EFFECTIVE DATE

Pub. L. 100-203, title X, §10714(e), Dec. 22, 1987, 101 Stat. 1330-472, provided that: “The amendments made by this section [enacting this section and amending sections 6501 and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].”

## CHAPTER 42—PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

Subchapter	Sec. <sup>1</sup>
A. Private foundations .....	4940
B. Black lung benefit trusts .....	4951
C. Political expenditures of section 501(c)(3) organizations .....	4955
D. Failure by certain charitable organizations to meet certain qualification requirements .....	4958
E. Abatement of first and second tier taxes in certain cases .....	4961
F. Tax shelter transactions .....	4965
G. Donor advised funds .....	4966
H. Excise tax based on investment income of private colleges and universities ...	4968

## AMENDMENTS

2017—Pub. L. 115-97, title I, §13701(b), Dec. 22, 2017, 131 Stat. 2168, added item for subchapter H.

2006—Pub. L. 109-280, title XII, §1231(b)(2), Aug. 17, 2006, 120 Stat. 1098, which directed the addition of item for subchapter G to the analysis for chapter 42 without specifying the act to be amended, was executed by adding the item to this analysis, which is for chapter 42 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Pub. L. 109-222, title V, §516(a)(2), May 17, 2006, 120 Stat. 371, added item for subchapter F.

1996—Pub. L. 104-168, title XIII, §1311(c)(6), July 30, 1996, 110 Stat. 1478, struck out item for subchapter D “Abatement of first and second-tier taxes in certain cases” and added items for subchapters D and E.

1987—Pub. L. 100-203, title X, §10712(c)(7), (9), Dec. 22, 1987, 101 Stat. 1330-467, substituted in chapter heading “AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS” for “BLACK LUNG BENEFIT TRUSTS”, struck out item for subchapter C “Abatement of first and second tier taxes in certain cases”, and added items for subchapters C and D.

1984—Pub. L. 98-369, div. A, title III, §305(b)(3), July 18, 1984, 98 Stat. 784, substituted “Abatement of first and second tier taxes in certain cases” for “Abatement of second tier taxes where there is correction during correction period” in item for subchapter C.

1980—Pub. L. 96-596, §2(c)(3), Dec. 24, 1980, 94 Stat. 3474, added item for subchapter C.

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in chapter heading inserted “; BLACK LUNG BENEFIT TRUSTS” after “FOUNDATIONS”, and added items for subchapters A and B.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added chapter heading “PRIVATE FOUNDATIONS”.

### Subchapter A—Private Foundations

Sec.	
4940.	Excise tax based on investment income.
4941.	Taxes on self-dealing.
4942.	Taxes on failure to distribute income.
4943.	Taxes on excess business holdings.
4944.	Taxes on investments which jeopardize charitable purpose.
4945.	Taxes on taxable expenditures.
4946.	Definitions and special rules.
4947.	Application of taxes to certain nonexempt trusts.

<sup>1</sup> Section numbers editorially supplied.

## Sec.

4948. Application of taxes and denial of exemption with respect to certain foreign organizations.

## AMENDMENTS

1978—Pub. L. 95-227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, added subchapter A heading and designated sections 4940 to 4948 as subchapter A.

1969—Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added analysis of sections.

### § 4940. Excise tax based on investment income

#### (a) Tax-exempt foundations

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

#### (b) Taxable foundations

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

#### (c) Net investment income defined

##### (1) In general

For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

##### (2) Gross investment income

For purposes of paragraph (1), the term “gross investment income” means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

##### (3) Deductions

###### (A) In general

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

**(B) Modifications**

For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

**(4) Capital gains and losses**

For purposes of paragraph (1) in determining capital gain net income—

(A) There shall not be taken into account any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers or carrybacks.

(D) Except to the extent provided by regulation, under rules similar to the rules of section 1031 (including the exception under subsection (a)(2) thereof), no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than 1 year for a purpose or function constituting the basis of the private foundation's exemption if the entire property is exchanged immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption.

**(5) Tax-exempt income**

For purposes of this section, net investment income shall be determined by applying section 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).

**(d) Exemption for certain operating foundations****(1) In general**

No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

**(2) Exempt operating foundation**

For purposes of this subsection, the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

**(3) Definitions**

For purposes of this subsection—

**(A) Publicly supported**

A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

**(B) Disqualified individual**

The term "disqualified individual" means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

**(C) Substantial contributor**

The term "substantial contributor" means a person who is described in section 507(d)(2).

**(D) Family**

The term "family" has the meaning given to such term by section 4946(d).

**(E) Constructive ownership**

The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii).

**(e) Reduction in tax where private foundation meets certain distribution requirements****(1) In general**

In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

**(2) Requirements**

A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

**(3) Average percentage payout for base period**

For purposes of this subsection—

**(A) In general**

The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

**(B) Percentage payout**

The term “percentage payout” means, with respect to any taxable year, the percentage determined by dividing—

- (i) the amount of the qualifying distributions made by the private foundation during the taxable year, by
- (ii) the assets of the private foundation for the taxable year.

**(C) Special rule where tax reduced under this subsection**

For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

**(4) Base period**

For purposes of this subsection—

**(A) In general**

The term “base period” means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

**(B) New private foundations, etc.**

If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

**(5) Other definitions**

For purposes of this subsection—

**(A) Qualifying distribution**

The term “qualifying distribution” has the meaning given such term by section 4942(g).

**(B) Assets**

The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

**(6) Treatment of successor organizations, etc.**

In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498; amended Pub. L. 94-455, title XIX, §1901(b)(33)(N), Oct. 4, 1976, 90 Stat. 1802; Pub. L. 95-345, §2(a)(4), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95-600, title V, §520(a), Nov. 6, 1978, 92 Stat. 2884; Pub. L. 98-369, div. A, title III, §§302(a), 303(a), July 18, 1984, 98 Stat. 779, 781;

Pub. L. 99-514, title XIII, §1301(j)(6), title XVIII, §1832, Oct. 22, 1986, 100 Stat. 2658, 2851; Pub. L. 109-280, title XII, §1221(a)(1), (b), Aug. 17, 2006, 120 Stat. 1089; Pub. L. 110-172, §3(f), Dec. 29, 2007, 121 Stat. 2475.)

## CODIFICATION

Section 1221(a)(1), (b) of Pub. L. 109-280, which directed the amendment of section 4940 without specifying the act to be amended, was executed to this section, which is section 4940 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

## AMENDMENTS

2007—Subsec. (c)(4)(A). Pub. L. 110-172 amended text generally. Prior to amendment, text read as follows: “There shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax).”

2006—Subsec. (c)(2). Pub. L. 109-280, §1221(a)(1), inserted at end “Such term shall also include income from sources similar to those in the preceding sentence.” See Codification note above.

Subsec. (c)(4)(A). Pub. L. 109-280, §1221(b)(1), substituted “gross investment income (as defined in paragraph (2))” for “interest, dividends, rents, and royalties”. See Codification note above.

Subsec. (c)(4)(C). Pub. L. 109-280, §1221(b)(2), inserted “or carrybacks” after “carryovers”. See Codification note above.

Subsec. (c)(4)(D). Pub. L. 109-280, §1221(b)(3), added subpar. (D). See Codification note above.

1986—Subsec. (c)(5). Pub. L. 99-514, §1301(j), substituted “(relating to State and local bonds)” for “(relating to interest on certain governmental obligations)”.

Subsec. (e)(2). Pub. L. 99-514, §1832, added subpar. (B) and struck out former subpar. (B) and concluding provision which read as follows:

“(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting ‘3½ percent’ for ‘5 percent’.”

1984—Subsec. (d). Pub. L. 98-369, §302(a), added subsec. (d).

Subsec. (e). Pub. L. 98-369, §303(a), added subsec. (e). 1978—Subsec. (a). Pub. L. 95-600 substituted “2 percent” for “4 percent”.

Subsec. (c)(2). Pub. L. 95-345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (c). Pub. L. 94-455 substituted “capital gain net income” for “net capital gain” in par. (1) after “investment income and the”, and in par. (4) after “par. (1) in determining”.

## EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1221(c) of Pub. L. 109-280, set out as a note under section 509 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(j)(6) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as

otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1832 of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, § 302(c)(1), July 18, 1984, 98 Stat. 780, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

Pub. L. 98-369, div. A, title III, § 303(b), July 18, 1984, 98 Stat. 782, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Pub. L. 95-600, title V, § 520(b), Nov. 6, 1978, 92 Stat. 2884, provided that: "The amendment made by the first section of this Act [probably meaning section 520(a), which amended this section] shall apply to taxable years beginning after September 30, 1977."

Amendment by Pub. L. 95-345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as a note under section 509 of this title.

#### EFFECTIVE DATE

Pub. L. 91-172, title I, § 101(k), Dec. 30, 1969, 83 Stat. 533, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

"(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (l) [set out as a note below] the amendments made by this section [enacting this section and sections 507 to 509, 4941 to 4848, 6056, 6684, and 6685 of this title, amending sections 101, 170, 501, 503, 542, 663, 681, 878, 884, 1443, 2039, 2517, 4057, 4221, 4253, 4294, 5214, 6033, 6034, 6043, 6104, 6161, 6201, 6211 to 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 7207, 7422, and 7454 of this title, repealing section 504 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect on January 1, 1970.

"(2) PROVISIONS EFFECTIVE FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1969.—The following provisions shall apply to taxable years beginning after December 31, 1969:

"(A) Sections 4940, 4942, 4943, and 4948 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), and

"(B) The amendments made by subsection (d) [enacting section 6056 of this title, and amending sections 6033 and 6652 of this title] and paragraphs (3), (15), (16), (20), (21), (30), (31), (32), (33), (34), (35), and (61) of subsection (j) [amending sections 501, 542, 878, 884, 6033, 6034, and 6043 of this title and repealing section 504 of this title].

"(3) SECTIONS 508(a), (b), AND (c).—Sections 508 (a), (b), and (c) of the Internal Revenue Code of 1986 (as added by this section) shall take effect on October 9, 1969."

#### SAVINGS PROVISION

Pub. L. 91-172, title I, § 101(l), Dec. 30, 1969, 83 Stat. 533, as amended by Pub. L. 93-490, § 4(a), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94-455, title XIII, §§ 1301(a), 1309(a), Oct. 4, 1976, 90 Stat. 1713, 1729; Pub. L. 95-600, title VII, § 703(f), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98-369, div. A, title III, § 314(b)(1), July 18, 1984, 98 Stat. 787; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) REFERENCES TO INTERNAL REVENUE CODE PROVISIONS.—Except as otherwise expressly provided, references in the following paragraphs of this subsection

are to sections of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by this section.

"(2) SECTION 4941.—Section 4941 shall not apply to—

"(A) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946), pursuant to the terms of securities of such corporation in existence at the time acquired by the foundation, if such securities were acquired by the foundation before May 27, 1969;

"(B) the sale, exchange, or other disposition of property which is owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter), to a disqualified person, if such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings) applied, in the case of a disposition before January 1, 1977, without taking section 4943(c)(4) into account and it receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

"(C) the leasing of property or the lending of money or other extension of credit between a disqualified person and a private foundation pursuant to a binding contract in effect on October 9, 1969 (or pursuant to renewals of such a contract), until taxable years beginning after December 31, 1979, if such leasing or lending (or other extension of credit) remains at least as favorable as an arm's-length transaction with an unrelated party and if the execution of such contract was not at the time of such execution a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

"(D) the use of goods, services, or facilities which are shared by a private foundation and a disqualified person until taxable years beginning after December 31, 1979, if such use is pursuant to an arrangement in effect before October 9, 1969, and such arrangement was not a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law) at the time it was made and would not be a prohibited transaction if such section continued to apply;

"(E) the use of property in which a private foundation and a disqualified person have a joint or common interest, if the interests of both in such property were acquired before October 9, 1969; and

"(F) the sale, exchange, or other disposition (other than by lease) of property which is owned by a private foundation to a disqualified person if—

"(i) such foundation is leasing substantially all of such property under a lease to which subparagraph (C) applies,

"(ii) the disposition to such disqualified person occurs before January 1, 1978, and

"(iii) such foundation receives in return for the disposition to such disqualified person an amount which equals or exceeds the fair market value of such property at the time of the disposition or at the time (after June 30, 1976) a contract for the disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law).

"(3) SECTION 4942.—In the case of organizations organized before May 27, 1969, section 4942 shall—

"(A) for all purposes other than the determination of the minimum investment return under section 4942(j)(3)(B)(ii), for taxable years beginning before January 1, 1972, apply without regard to section 4942(e) (relating to minimum investment return), and for taxable years beginning in 1972, 1973, and 1974,

apply with an applicable percentage (as prescribed in section 4942(e)(3)) which does not exceed 4½ percent, 5 percent, and 5½ percent, respectively;

“(B) not apply to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 shall apply to such organization if the organization would have been denied exemption if section 504(a) had not been repealed by this Act, or would have had its deductions under section 642(c) limited if section 681(c) had not been repealed by this Act. In applying the preceding sentence, in addition to the limitations contained in section 504(a) or 681(c) before its repeal, section 504(a)(1) or 681(c)(1) shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date;

“(C) apply to a grant to a private foundation described in section 4942(g)(1)(A)(ii) which is not described in section 4942(g)(1)(A)(i), pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter, as if such grant is a grant to an operating foundation (as defined in section 4942(j)(3)), if such grant is made for one or more of the purposes described in section 170(c)(2)(B) and is to be paid out to such private foundation on or before December 31, 1974;

“(D) apply, for purposes of section 4942(f), in such a manner as to treat any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise as not essentially equivalent to a dividend under section 302(b)(1) if such redemption is described in paragraph (2)(B) of this subsection;

“(E) not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 are inconsistent with such prohibition; and

“(F) apply, in the case of an organization described in paragraph (4)(A) of this subsection,

“(i) by applying section 4942(e) without regard to the stock to which paragraph (4)(A)(ii) of this subsection applies,

“(ii) by applying section 4942(f) without regard to dividend income for such stock, and

“(iii) by defining the distributable amount as the sum of the amount determined under section 4942(d) (after the application of clauses (i) and (ii)), and the amount of the dividend income from such stock.

With respect to taxable years beginning after December 31, 1971, subparagraphs (B) and (E) shall apply only during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942, and in the case of subparagraph (B) for all periods after the termination of such judicial proceeding during which the governing instrument or any other instrument does not permit compliance with such provisions.

“(4) SECTION 4943.—

“(A) In the case of a private foundation—

“(i) which was incorporated before January 1, 1951;

“(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

“(iii) which acquired such stock solely by gift, devise, or bequest, section 4943(c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise as if it did not contain the phrase ‘, but in no event shall the percentage so substituted be more than 50 percent’, and section 4943(c)(4)(D) shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

“(B) Subparagraph (A) shall apply to a private foundation only if—

“(i) the foundation does not purchase any stock or other interest in the enterprise described in subparagraph (A) after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943; and

“(ii) in the last 5 taxable years ending on or before December 31, 1970, the foundation expends substantially all of its adjusted net income (as defined in section 4942(f)) for the purpose or function for which it is organized and operated.

“(C) For purposes of section 4943(c)(6), the term ‘purchase’ does not include an exchange which is described in paragraph (2)(B) of this subsection and which is pursuant to a plan for disposition of excess business holdings.

“(5) SECTION 4945.—Section 4945(d)(4) and (h) shall not apply to a grant which is described in paragraph (3)(C) of this subsection.

“(6) SECTION 508(e).—Section 508(e) shall not apply to require inclusion in governing instruments of any provisions inconsistent with this subsection.

“(7) SECTION 509(a).—In the case of any trust created under the terms of a will or a codicil to a will executed on or before March 30, 1924, by which the testator bequeathed all of the outstanding common stock of a corporation in trust, the income of which trust is to be used principally for the benefit of those from time to time employed by the corporation and their families, the trustees of which trust are elected or selected from among the employees of such corporation, and which trust does not own directly any stock in any other corporation, if the trust makes an irrevocable election under this paragraph within one year after the date of the enactment of this Act [Dec. 30, 1969], such trust shall be treated as not being a private foundation for purposes of the Internal Revenue Code of 1986 but shall be treated for purposes of such Code as if it were not exempt from tax under section 501(a) for any taxable year beginning after the date of the enactment of this Act [Dec. 30, 1969] and before the date (if any) on which such trust has complied with the requirements of section 507 for termination of the status of an organization as a private foundation.

“(8) CERTAIN REDEMPTIONS.—For purposes of applying section 302(b)(1) to the determination of the amount of gross investment income under sections 4940 and 4948(a), any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend, if such redemption is described in paragraph (2)(B) of this subsection.”

[Pub. L. 98-369, div. A, title III, §314(b)(2), July 18, 1984, 98 Stat. 787, provided that: “The amendment made by paragraph (1) [amending section 101(4)(A)(iii) of Pub. L. 91-172, set out above] shall apply as if included in section 101(7)(4) of the Tax Reform Act of 1969 [Pub. L. 91-172].”]

[Pub. L. 94-455, title XIII, §1301(b), Oct. 4, 1976, 90 Stat. 1713, provided that: “The amendments made by subsection (a) [enacting subpar. (F) of section 101(2) of Pub. L. 91-172, set out above] shall apply to dispositions after the date of the enactment of this Act [Oct. 4, 1976] in taxable years ending after such date.”]

[Pub. L. 94-455, title XIII, §1309(b), Oct. 4, 1976, 90 Stat. 1729, provided that: “The amendment made by this section [amending section 101(2)(B) of Pub. L. 91-172, set out above] shall apply to dispositions made after the date of enactment of this Act [Oct. 4, 1976].”]

[Pub. L. 93-490, §4(b), Oct. 26, 1974, 88 Stat. 1467, provided that: “The amendment made by this section [enacting subpar. (F) of section 101(3) of Pub. L. 91-172, set out above] shall apply to taxable years beginning after December 31, 1971.”]

#### DETERMINATION OF OPERATING FOUNDATION STATUS FOR CERTAIN PURPOSES

Pub. L. 100-647, title VI, §6204, Nov. 10, 1988, 102 Stat. 3730, provided that: “For purposes of section 302(c)(3) of the Deficit Reduction Act of 1984 [Pub. L. 98-369, set out below], a private foundation which constituted an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for its last taxable year ending before January 1, 1983, shall be treated as constituting an operating foundation as of January 1, 1983.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### PUBLIC SUPPORT REQUIREMENT NOT APPLICABLE TO CERTAIN EXISTING FOUNDATIONS

Pub. L. 98-369, div. A, title III, §302(c)(3), July 18, 1984, 98 Stat. 781, provided that: “A foundation which was an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1954) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B) of such Code (as added by subsection (a)).”

### § 4941. Taxes on self-dealing

#### (a) Initial taxes

##### (1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

##### (2) On foundation manager

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by

any foundation manager who participated in the act of self-dealing.

#### (b) Additional taxes

##### (1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

##### (2) On foundation manager

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

#### (c) Special rules

For purposes of subsections (a) and (b)—

##### (1) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

##### (2) \$20,000 limit for management

With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$20,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$20,000.

#### (d) Self-dealing

##### (1) In general

For purposes of this section, the term “self-dealing” means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

##### (2) Special rules

For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge (determined without regard to section 7872) and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value;

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed \$25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702 of title 5, United States Code, for like travel by employees of the United States; and

(H) the leasing by a disqualified person to a private foundation of office space for use by the foundation in a building with other tenants who are not disqualified persons shall not be treated as an act of self-dealing if—

(i) such leasing of office space is pursuant to a binding lease which was in effect on October 9, 1969, or pursuant to renewals of such a lease;

(ii) the execution of such lease was not a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law) at the time of such execution; and

(iii) the terms of the lease (or any renewal) reflect an arm's-length transaction.

#### **(e) Other definitions**

For purposes of this section—

##### **(1) Taxable period**

The term “taxable period” means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

##### **(2) Amount involved**

The term “amount involved” means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the

date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

### (3) Correction

The terms “correction” and “correct” mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 499; amended Pub. L. 94-455, title XIX, §§1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96-596, §2(a)(1)(A), (B), (2)(A), (3)(A), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 96-608, §5, Dec. 28, 1980, 94 Stat. 3553; Pub. L. 99-234, title I, §107(c), Jan. 2, 1986, 99 Stat. 1759; Pub. L. 99-514, title I, §122(a)(2)(A), title XVIII, §1812(b)(1), Oct. 22, 1986, 100 Stat. 2110, 2833; Pub. L. 100-647, title I, §1001(d)(1)(A), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109-280, title XII, §1212(a)(1), (2), Aug. 17, 2006, 120 Stat. 1074.)

#### REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(G)(ii), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

#### CODIFICATION

Section 1212(a)(1), (2) of Pub. L. 109-280, which directed the amendment of section 4941 without specifying the act to be amended, was executed to this section, which is section 4941 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

#### AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-280, §1212(a)(1)(A), substituted “10 percent” for “5 percent”. See Codification note above.

Subsec. (a)(2). Pub. L. 109-280, §1212(a)(1)(B), substituted “5 percent” for “2½ percent”. See Codification note above.

Subsec. (c)(2). Pub. L. 109-280, §1212(a)(2), substituted “\$20,000” for “\$10,000” wherever appearing in heading and text. See Codification note above.

1988—Subsec. (d)(2)(G)(ii). Pub. L. 100-647 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii).”

1986—Subsec. (d)(2)(B). Pub. L. 99-514, §1812(b)(1), inserted “(determined without regard to section 7872)” after “without interest or other charge”.

Subsec. (d)(2)(G)(i). Pub. L. 99-514, §122(a)(2)(A), inserted “(without regard to paragraph (3) thereof)” after “section 74(b)”.

Subsec. (d)(2)(G)(vii). Pub. L. 99-234 substituted “5702” for “5702(a)”.

1980—Subsec. (b)(1). Pub. L. 96-596, §2(a)(1)(A), substituted “taxable period” for “correction period”.

Subsec. (d)(2)(H). Pub. L. 96-608 added subpar. (H).

Subsec. (e)(1)(B), (C). Pub. L. 96-596, §2(a)(2)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(B). Pub. L. 96-596, §2(a)(1)(B), substituted “taxable period” for “correction period”.

Subsec. (e)(4). Pub. L. 96-596, §2(a)(3)(A), struck out par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the

date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

1976—Subsec. (d)(2)(G)(ii). Pub. L. 94-455, §1901(b)(8)(H), substituted “educational organization described in section 170(b)(1)(A)(ii)” for “educational institution described in section 151(e)(4)” after “study at an”.

Subsec. (e)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, §1212(f), Aug. 17, 2006, 120 Stat. 1075, provided that: “The amendments made by this section [amending this section and sections 4942 to 4945 and 4958 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(a)(2)(A) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1812(b)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99-234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

#### SAVINGS PROVISION

Exceptions to applicability of section, see section 101(i)(2) of Pub. L. 91-172, set out as a note under section 4940 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### TAX ON SELF-DEALING NOT TO APPLY TO CERTAIN STOCK PURCHASES

Pub. L. 98-369, div. A, title III, §312, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—Section 4941 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to



taxes on self-dealing) shall not apply to the purchase during 1978 of stock from a private foundation (and to any note issued in connection with such purchase) if—

“(1) consideration for such purchase equaled or exceeded the fair market value of such stock,

“(2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,

“(3) the aggregate contributions to such foundation by the purchaser before such date were less than \$10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and

“(4) such purchase was pursuant to the settlement of litigation involving the purchaser.

“(b) **STATUTE OF LIMITATIONS.**—If credit or refund of any overpayment of tax resulting from subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.”

**APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969**

Determination of status as substantial contributor within section 507(d)(2) of this title for purposes of applying this section, see section 3 of Pub. L. 95-170, set out as a note under section 507 of this title.

## § 4942. Taxes on failure to distribute income

### (a) Initial tax

There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(2)),

(C) the foundation notifies the Secretary that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

### (b) Additional tax

In any case in which an initial tax is imposed under subsection (a) on the undistributed in-

come of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

### (c) Undistributed income

For purposes of this section, the term “undistributed income” means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) the distributable amount for such taxable year, exceeds

(2) the qualifying distributions made before such time out of such distributable amount.

### (d) Distributable amount

For purposes of this section, the term “distributable amount” means, with respect to any foundation for any taxable year, an amount equal to—

(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by

(2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

### (e) Minimum investment return

#### (1) In general

For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is 5 percent of the excess of—

(A) the aggregate fair market value of all assets of the foundation other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose, over

(B) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred).

#### (2) Valuation

##### (A) In general

For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary shall by regulations prescribe.

##### (B) Reductions in value for blockage or similar factors

In determining the value of any securities under this paragraph, the fair market value of such securities (determined without regard to any reduction in value) shall not be reduced unless, and only to the extent that, the private foundation establishes that as a result of—

(i) the size of the block of such securities,

(ii) the fact that the securities held are securities in a closely held corporation, or

(iii) the fact that the sale of such securities would result in a forced or distress sale,

the securities could not be liquidated within a reasonable period of time except at a price less than such fair market value. Any reduction in value allowable under this subparagraph shall not exceed 10 percent of such fair market value.

**(f) Adjusted net income**

**(1) Defined**

For purposes of subsection (j), the term “adjusted net income” means the excess (if any) of—

(A) the gross income for the taxable year (determined with the income modifications provided by paragraph (2)), over

(B) the sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

**(2) Income modifications**

The income modifications referred to in paragraph (1)(A) are as follows:

(A) section 103 (relating to State and local bonds) shall not apply.

(B) capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year;

(C) there shall be taken into account—

(i) amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside; and

(D) section 483 (relating to imputed interest) shall not apply in the case of a binding contract made in a taxable year beginning before January 1, 1970.

**(3) Deduction modifications**

The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

**(4) Transitional rule**

For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property

held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

**(g) Qualifying distributions defined**

**(1) In general**

For purposes of this section, the term “qualifying distribution” means—

(A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

**(2) Certain set-asides**

**(A) In general**

Subject to such terms and conditions as may be prescribed by the Secretary, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B).

**(B) Requirements**

An amount set aside for a specific project shall meet the requirements of this subparagraph if at the time of the set-aside the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within 5 years, and either—

(i) at the time of the set-aside the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by immediate payment of funds, or

(ii)(I) the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made,

(II) the private foundation in each taxable year beginning after December 31, 1975 (or after the end of the fourth taxable year following the year of its creation, whichever is later), distributes amounts, in cash or its equivalent, equal to not less than the distributable amount determined under subsection (d) (without regard to subsection (i)) for purposes described in section 170(c)(2)(B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years), and

(III) the private foundation has distributed (including but not limited to payments with respect to set-asides which

were treated as qualifying distributions in one or more prior years) during the four taxable years immediately preceding its first taxable year beginning after December 31, 1975, or the fifth taxable year following the year of its creation, whichever is later, an aggregate amount, in cash or its equivalent, of not less than the sum of the following: 80 percent of the first preceding taxable year's distributable amount; 60 percent of the second preceding taxable year's distributable amount; 40 percent of the third preceding taxable year's distributable amount; and 20 percent of the fourth preceding taxable year's distributable amount.

**(C) Certain failures to distribute**

If, for any taxable year to which clause (ii)(II) of subparagraph (B) applies, the private foundation fails to distribute in cash or its equivalent amounts not less than those required by such clause and—

(i) the failure to distribute such amounts was not willful and was due to reasonable cause, and

(ii) the foundation distributes an amount in cash or its equivalent which is not less than the difference between the amounts required to be distributed under clause (ii)(II) of subparagraph (B) and the amounts actually distributed in cash or its equivalent during that taxable year within the correction period (as defined in section 4963(e)),

such distribution in cash or its equivalent shall be treated for the purposes of this subparagraph as made during such year.

**(D) Reduction in distribution amount**

If, during the taxable years in the adjustment period for which the organization is a private foundation, the foundation distributes amounts in cash or its equivalent which exceed the amount required to be distributed under clause (ii)(II) of subparagraph (B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in prior years), then for purposes of this subsection the distribution required under clause (ii)(II) of subparagraph (B) for the taxable year shall be reduced by an amount equal to such excess.

**(E) Adjustment period**

For purposes of subparagraph (D), with respect to any taxable year of a private foundation, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1975, and immediately preceding the taxable year.

In the case of a set-aside which satisfies the requirements of clause (i) of subparagraph (B), for good cause shown, the period for paying the amount set aside may be extended by the Secretary.

**(3) Certain contributions to section 501(c)(3) organizations**

For purposes of this section, the term "qualifying distribution" includes a contribu-

tion to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

**(4) Limitation on distributions by nonoperating private foundations to supporting organizations**

**(A) In general**

For purposes of this section, the term "qualifying distribution" shall not include any amount paid by a private foundation which is not an operating foundation to—

(i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(ii) any organization which is described in subparagraph (B) or (C) if—

(I) a disqualified person of the private foundation directly or indirectly controls such organization or a supported organization (as defined in section 509(f)(3)) of such organization, or

(II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

**(B) Type I and type II supporting organizations**

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

(ii) supervised or controlled in connection with one or more such organizations.

**(C) Functionally integrated type III supporting organizations**

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

**(h) Treatment of qualifying distributions**

**(1) In general**

Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) first out of the undistributed income of the immediately preceding taxable year (if

the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof.

(B) second out of the undistributed income for the taxable year to the extent thereof, and

(C) then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

**(2) Correction of deficient distributions for prior taxable years, etc.**

In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary shall by regulations prescribe.

**(i) Adjustment of distributable amount where distributions during prior years have exceeded income**

**(1) In general**

If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) the aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(F)(ii) applies) during such taxable years, exceed

(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

**(2) Taxable years in adjustment period**

For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding 5) immediately preceding the taxable year.

**(j) Other definitions**

For purposes of this section—

**(1) Taxable period**

The term “taxable period” means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

(B) the date on which the tax imposed by subsection (a) is assessed.

**(2) Allowable distribution period**

The term “allowable distribution period” means, with respect to any private foundation,

the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income under this section.

**(3) Operating foundation**

For purposes of this section, the term “operating foundation” means any organization—

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of—

(i) its adjusted net income (as defined in subsection (f)), or

(ii) its minimum investment return; and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment return for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

**(4) Functionally related business**

The term “functionally related business” means—

(A) a trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

#### (5) Certain elderly care facilities

For purposes of this section (but no other provisions of this title), the term “operating foundation” includes any organization which, on May 26, 1969, and at all times thereafter before the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons, elderly persons, needy widows, or children but only if such organization meets the requirements of paragraph (3)(B)(ii).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 502; amended Pub. L. 94-455, title XIII, §§1302(a), 1303(a), 1310(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1713, 1715, 1729, 1834; Pub. L. 95-600, title V, §522(a), Nov. 6, 1978, 92 Stat. 2885; Pub. L. 96-596, §2(a)(1)(C), (2)(B), (3)(B), (4)(A), Dec. 24, 1980, 94 Stat. 3469-3472; Pub. L. 97-34, title VIII, §823(a), Aug. 13, 1981, 95 Stat. 351; Pub. L. 97-448, title I, §108(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-369, div. A, title III, §§304(a), (b), 305(b)(4), 314(a)(1), (2), July 18, 1984, 98 Stat. 782-784, 787; Pub. L. 99-514, title XIII, §1301(j)(6), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 109-280, title XII, §§1212(b), 1244(a), Aug. 17, 2006, 120 Stat. 1074, 1107; Pub. L. 110-172, §11(a)(14)(D), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 113-295, div. A, title II, §221(a)(105), Dec. 19, 2014, 128 Stat. 4053.)

#### CODIFICATION

Sections 1212(b) and 1244(a) of Pub. L. 109-280, which directed the amendment of section 4942 without specifying the act to be amended, were executed to this section, which is section 4942 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

#### AMENDMENTS

2014—Subsec. (g)(2)(A). Pub. L. 113-295, §221(a)(105)(A), substituted “Subject” for “For all taxable years beginning on or after January 1, 1975, subject”.

Subsec. (i)(2). Pub. L. 113-295, §221(a)(105)(B), struck out “beginning after December 31, 1969, and” after “(not exceeding 5)”.

2007—Subsec. (i)(1)(A). Pub. L. 110-172 substituted “section 170(b)(1)(F)(ii)” for “section 170(b)(1)(E)(ii)”.

2006—Subsec. (a). Pub. L. 109-280, §1212(b), substituted “30 percent” for “15 percent” in introductory provisions. See Codification note above.

Subsec. (g)(4). Pub. L. 109-280, §1244(a), amended heading and text of par. (4) generally, substituting provisions relating to limitation on distributions by non-operating private foundations to supporting organizations for provisions relating to limitation on administrative expenses allocable to making of contributions, gifts, and grants. See Codification note above.

1986—Subsec. (f)(2)(A). Pub. L. 99-514 substituted “(relating to State and local bonds)” for “(relating to interest on certain governmental obligations)”.

1984—Subsec. (a)(2)(B). Pub. L. 98-369, §314(a)(1), substituted “subsection (j)(2)” for “subsection (j)(4)”.

Subsec. (d)(1). Pub. L. 98-369, §304(b), substituted “the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by” for “the minimum investment return reduced by”.

Subsec. (f)(1). Pub. L. 98-369, §314(a)(2), substituted “subsection (j)” for “subsection (d)”.

Subsec. (g)(1)(A). Pub. L. 98-369, §304(a)(2), substituted “including that portion of reasonable and necessary administrative expenses” for “including administrative expenses”.

Subsec. (g)(2)(C)(ii). Pub. L. 98-369, §305(b)(4), substituted “section 4963(e)” for “section 4962(e)”.

Subsec. (g)(4). Pub. L. 98-369, §304(a)(1), added par. (4). 1983—Subsec. (j)(3)(A)(i). Pub. L. 97-448 substituted “or” for “and” at the end.

1981—Subsec. (d)(1). Pub. L. 97-34, §823(a)(1), struck out “or the adjusted net income (whichever is higher)” after “return”.

Subsec. (j)(3). Pub. L. 97-34, §823(a)(2), (3), inserted in subpar. (A) “the lesser of” after “substantially all of”, designated existing provisions as cl. (i), added cl. (ii), and inserted provision respecting applicability of subpar. (A)(ii).

1980—Subsec. (b). Pub. L. 96-596, §2(a)(1)(C), substituted “taxable period” for “correction period”.

Subsec. (g)(2)(C)(ii). Pub. L. 96-596, §2(a)(4)(A), substituted “the correction period (as defined in section 4962(e))” for “the initial correction period provided in subsection (j)(2)”.

Subsec. (j)(1). Pub. L. 96-596, §2(a)(2)(B), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a) of this section is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title.

Subsec. (j)(2). Pub. L. 96-596, §2(a)(3)(B)(i), (iii), redesignated par. (4) as (2) and struck out former par. (2), which defined correction period, with respect to any private foundation for any taxable year, as the period beginning with the first day of the taxable year and ending 90 days after the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income.

Subsec. (j)(3)(B)(i). Pub. L. 96-596, §2(a)(3)(B)(ii), substituted “paragraph (4)” for “paragraph (5)”.

Subsec. (j)(4) to (6). Pub. L. 96-596, §2(a)(3)(B)(iii), (iv), redesignated pars. (5) and (6) as (4) and (5), respectively.

1978—Subsec. (j)(6). Pub. L. 95-600 added par. (6).

1976—Subsec. (a)(2)(C). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e). Pub. L. 94-455, §1303(a), among other changes, substituted provisions establishing a fixed percentage rate to be used in computing the minimum investment return for any private foundation for provisions establishing a variable applicable percentage rate of 7 percent in 1970 and an applicable rate to be determined by the Secretary after 1970, for use in computing the minimum investment return for any private foundation and inserted provisions relating to reduction in value for blockage or similar factors.

Subsec. (f)(2)(D). Pub. L. 94-455, §1310(a), added subpar. (D).

Subsec. (g)(2). Pub. L. 94-455, §1302(a), among other changes, inserted reference to all taxable years beginning on or after Jan. 1, 1975, requirement that the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made, and subpars. (C) to (E).

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

## EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(b) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Pub. L. 109-280, title XII, §1244(c), Aug. 17, 2006, 120 Stat. 1108, provided that: “The amendments made by this section [amending this section and section 4945 of this title] shall apply to distributions and expenditures after the date of the enactment of this Act [Aug. 17, 2006].”

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §304(c), July 18, 1984, 98 Stat. 783, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.”

Amendment by section 305(b)(4) of Pub. L. 98-369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98-369, set out as an Effective Date note under section 4962 of this title.

Pub. L. 98-369, div. A, title III, §314(a)(4), July 18, 1984, 98 Stat. 787, provided that: “The amendments made by this subsection [amending this section and section 6501 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].”

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title VIII, §823(b), Aug. 13, 1981, 95 Stat. 352, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.”

## EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title V, §522(b), Nov. 6, 1978, 92 Stat. 2885, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.”

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIII, §1302(c), Oct. 4, 1976, 90 Stat. 1715, provided that: “The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 1974.”

Pub. L. 94-455, title XIII, §1303(b), Oct. 4, 1976, 90 Stat. 1715, provided that: “The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975.”

Pub. L. 94-455, title XIII, §1310(b), Oct. 4, 1976, 90 Stat. 1729, provided that: “The amendments made by this

section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].”

## SAVINGS PROVISION

Applicability of section to organizations organized before May 27, 1969, see section 101(l)(3) of Pub. L. 91-172, set out as a note under section 4940 of this title.

**§ 4943. Taxes on excess business holdings****(a) Initial tax****(1) Imposition**

There is hereby imposed on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 10 percent of the value of such holdings.

**(2) Special rules**

The tax imposed by paragraph (1)—

(A) shall be imposed on the last day of the taxable year, but

(B) with respect to the private foundation's holdings in any business enterprise, shall be determined as of that day during the taxable year when the foundation's excess holdings in such enterprise were the greatest.

**(b) Additional tax**

In any case in which an initial tax is imposed under subsection (a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the taxable period with respect to such holdings, the foundation still has excess business holdings in such enterprise, there is hereby imposed a tax equal to 200 percent of such excess business holdings.

**(c) Excess business holdings**

For purposes of this section—

**(1) In general**

The term “excess business holdings” means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

**(2) Permitted holdings in a corporation****(A) In general**

The permitted holdings of any private foundation in an incorporated business enterprise are—

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

**(B) 35 percent rule where third person has effective control of enterprise**

If—

(i) the private foundation and all disqualified persons together do not own more than 35 percent of the voting stock of an incorporated business enterprise, and

(ii) it is established to the satisfaction of the Secretary that effective control of the corporation is in one or more persons who are not disqualified persons with respect to the foundation,

then subparagraph (A) shall be applied by substituting 35 percent for 20 percent.

**(C) 2 percent de minimis rule**

A private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

**(3) Permitted holdings in partnerships, etc.**

The permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that—

(A) in the case of a partnership or joint venture, “profits interest” shall be substituted for “voting stock”, and “capital interest” shall be substituted for “nonvoting stock”,

(B) in the case of a proprietorship, there shall be no permitted holdings, and

(C) in any other case, “beneficial interest” shall be substituted for “voting stock”.

**(4) Present holdings**

(A)(i) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 20 percent of the voting stock on May 26, 1969, the percentage of such holdings shall be substituted for “20 percent,” and for “35 percent” (if the percentage of such holdings is greater than 35 percent), wherever it appears in paragraph (2), but in no event shall the percentage so substituted be more than 50 percent.

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be applied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

(II) the number of shares held by the foundation is not affected by any such issuance or redemption.

(iii) The percentage substituted under clause (i), and any percentage substituted under subparagraph (D), shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(iv) In the case of any merger, recapitalization, or other reorganization involving one or more business enterprises, the application of clauses (i), (ii), and (iii) shall be determined under regulations prescribed by the Secretary.

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation and all disqualified persons have more than a 95 percent voting stock interest on such date,

(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date, or

(iii) during the 10-year period beginning on such date, in any other case.

(C) The 20-year, 15-year, and 10-year periods described in subparagraph (B) for the disposition of excess business holdings shall be suspended during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to allow disposition of such holdings.

(D)(i) If, at any time during the second phase, all disqualified persons together have holdings in a business enterprise in excess of 2 percent of the voting stock of such enterprise, then subparagraph (A)(i) shall be applied by substituting for “50 percent” the following: “50 percent, of which not more than 25 percent shall be voting stock held by the private foundation”.

(ii) If, immediately before the close of the second phase, clause (i) of this subparagraph did not apply with respect to a business enterprise, then for all periods after the close of the second phase subparagraph (A)(i) shall be applied by substituting for “50 percent” the following: “35 percent, or if at any time after the close of the second phase all disqualified persons together have had holdings in such enterprise which exceed 2 percent of the voting stock, 35 percent, of which not more than 25 percent shall be voting stock held by the private foundation”.

(iii) For purposes of this subparagraph, the term “second phase” means the 15-year period immediately following the 20-year, 15-year, or 10-year period described in subparagraph (B), whichever applies, as modified by subparagraph (C).

(E) Clause (ii) of subparagraph (B) shall not apply with respect to any business enterprise if before January 1, 1971, one or more individuals who are substantial contributors (or members of the family (within the meaning of section 4946(d)) of one or more substantial contributors) to the private foundation and who on May 26, 1969, held more than 15 percent of the voting stock of the enterprise elect, in such manner as the Secretary may by regulations prescribe, not to have such clause (ii) apply with respect to such enterprise.

**(5) Holdings acquired by trust or will**

Paragraph (4) (other than subparagraph (B)(i)) shall apply to any interest in a business enterprise which a private foundation acquires under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter, as if such interest were held on May 26, 1969, except that the 15-year and 10-year periods prescribed in clauses (ii) and (iii) of paragraph (4)(B) shall commence with respect to such interest on the date of distribution under the trust or will in lieu of May 26, 1969.

**(6) 5-year period to dispose of gifts, bequests, etc.**

Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase “or by a disqualified person” in the material preceding subparagraph (A).

**(7) 5-year extension of period to dispose of certain large gifts and bequests**

The Secretary may extend for an additional 5-year period the period under paragraph (6)

for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if—

(A) the foundation establishes that—

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period—

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundation submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

**(d) Definitions; special rules**

For purposes of this section—

**(1) Business holdings**

In computing the holdings of a private foundation, or a disqualified person (as defined in section 4946) with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. The preceding sentence shall not apply with respect to an income or remainder interest of a private foundation in a trust described in section 4947(a)(2), but only if, in the case of property transferred in trust after May 26, 1969, such foundation holds only an income interest or only a remainder interest in such trust.

**(2) Taxable period**

The term “taxable period” means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning on the first day on which there are excess holdings and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212 in respect of such holdings, or

(B) the date on which the tax imposed by subsection (a) in respect of such holdings is assessed.

**(3) Business enterprise**

The term “business enterprise” does not include—



(A) a functionally related business (as defined in section 4942(j)(4)), or

(B) a trade or business at least 95 percent of the gross income of which is derived from passive sources.

For purposes of subparagraph (B), gross income from passive sources includes the items excluded by section 512(b)(1), (2), (3), and (5), and income from the sale of goods (including charges or costs passed on at cost to purchasers of such goods or income received in settlement of a dispute concerning or in lieu of the exercise of the right to sell such goods) if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods.

**(4) Disqualified person**

The term “disqualified person” (as defined in section 4946(a)) does not include a plan described in section 4975(e)(7) with respect to the holdings of a private foundation described in paragraphs (4) and (5) of subsection (c).

**(e) Application of tax to donor advised funds**

**(1) In general**

For purposes of this section, a donor advised fund (as defined in section 4966(d)(2)) shall be treated as a private foundation.

**(2) Disqualified person**

In applying this section to any donor advised fund (as so defined), the term “disqualified person” means, with respect to the donor advised fund, any person who is—

(A) described in section 4966(d)(2)(A)(iii),

(B) a member of the family of an individual described in subparagraph (A), or

(C) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting “persons described in subparagraph (A) or (B) of section 4943(e)(2)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof).

**(3) Present holdings**

For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to donor advised funds (as so defined), except that—

(A) “the date of the enactment of this subsection” shall be substituted for “May 26, 1969” each place it appears in paragraphs (4), (5), and (6), and

(B) “January 1, 2007” shall be substituted for “January 1, 1971” in paragraph (4)(E).

**(f) Application of tax to supporting organizations**

**(1) In general**

For purposes of this section, an organization which is described in paragraph (3) shall be treated as a private foundation.

**(2) Exception**

The Secretary may exempt the excess business holdings of any organization from the application of this subsection if the Secretary determines that such holdings are consistent with the purpose or function constituting the basis for its exemption under section 501.

**(3) Organizations described**

An organization is described in this paragraph if such organization is—

(A) a type III supporting organization (other than a functionally integrated type III supporting organization), or

(B) an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in section 509(f)(2)(B).

**(4) Disqualified person**

**(A) In general**

In applying this section to any organization described in paragraph (3), the term “disqualified person” means, with respect to the organization—

(i) any person who was, at any time during the 5-year period ending on the date described in subsection (a)(2)(A), in a position to exercise substantial influence over the affairs of the organization,

(ii) any member of the family (determined under section 4958(f)(4)) of an individual described in clause (i),

(iii) any 35-percent controlled entity (as defined in section 4958(f)(3) by substituting “persons described in clause (i) or (ii) of section 4943(f)(4)(A)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof),

(iv) any person described in section 4958(c)(3)(B), and

(v) any organization—

(I) which is effectively controlled (directly or indirectly) by the same person or persons who control the organization in question, or

(II) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (B) or a member of the family (within the meaning of section 4946(d)) of such a person.

**(B) Persons described**

A person is described in this subparagraph if such person is—

(i) a substantial contributor to the organization (as defined in section 4958(c)(3)(C)),

(ii) an officer, director, or trustee of the organization (or an individual having powers or responsibilities similar to those of the officers, directors, or trustees of the organization), or

(iii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor (as so defined) to the organization.

**(5) Type III supporting organization; functionally integrated type III supporting organization**

For purposes of this subsection—

**(A) Type III supporting organization**

The term “type III supporting organization” means an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is operated in connection with one or more organizations described in paragraph (1) or (2) of section 509(a).

**(B) Functionally integrated type III supporting organization**

The term “functionally integrated type III supporting organization” means a type III supporting organization which is not required under regulations established by the Secretary to make payments to supported organizations (as defined under section 509(f)(3)) due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

**(6) Special rule for certain holdings of type III supporting organizations**

For purposes of this subsection, the term “excess business holdings” shall not include any holdings of a type III supporting organization in any business enterprise if, as of November 18, 2005, the holdings were held (and at all times thereafter, are held) for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over such organization.

**(7) Present holdings**

For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to organizations described in section 509(a)(3), except that—

(A) “the date of the enactment of this subsection” shall be substituted for “May 26, 1969” each place it appears in paragraphs (4), (5), and (6), and

(B) “January 1, 2007” shall be substituted for “January 1, 1971” in paragraph (4)(E).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 507; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-596, §2(a)(1)(D), (2)(C), (3)(C), (4)(B), Dec. 24, 1980, 94 Stat. 3469-3472; Pub. L. 98-369, div. A, title III, §§307(a), 308(a), 309(a), 310(a), 314(c)(1), July 18, 1984, 98 Stat. 784, 785, 787; Pub. L. 109-280, title XII, §§1212(c), 1233(a), 1243(a), Aug. 17, 2006, 120 Stat. 1074, 1099, 1105; Pub. L. 113-295, div. A, title II, §220(r), Dec. 19, 2014, 128 Stat. 4036.)

**REFERENCES IN TEXT**

The date of enactment of this subsection, referred to in subsecs. (e)(3)(A) and (f)(7)(A), probably means the date of enactment of subsecs. (e) and (f) which were enacted by Pub. L. 109-280, which was approved Aug. 17, 2006.

**CODIFICATION**

Sections 1212(c), 1233(a), and 1243(a) of Pub. L. 109-280, which directed the amendment of section 4943 without specifying the act to be amended, were executed to this section, which is section 4943 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

**AMENDMENTS**

2014—Subsecs. (e)(3)(B), (f)(7)(B). Pub. L. 113-295 substituted “January 1, 1971” for “January 1, 1970”.

2006—Subsec. (a)(1). Pub. L. 109-280, §1212(c), substituted “10 percent” for “5 percent”. See Codification note above.

Subsec. (e). Pub. L. 109-280, §1233(a), added subsec. (e). See Codification note above.

Subsec. (f). Pub. L. 109-280, §1243(a), added subsec. (f). See Codification note above.

1984—Subsec. (c)(4)(A)(ii). Pub. L. 98-369, §308(a), substituted “For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as (I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and (II) the number of shares held by the foundation is not affected by any such issuance or redemption” for “For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent”.

Subsec. (c)(4)(B)(i). Pub. L. 98-369, §309(a), substituted “the private foundation and all disqualified persons have” for “the private foundation has”.

Subsec. (c)(6). Pub. L. 98-369, §310(a), inserted following subpar. (B) “In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase ‘or by a disqualified person’ in the material preceding subparagraph (A).”

Subsec. (c)(7). Pub. L. 98-369, §307(a), added par. (7).

Subsec. (d)(4). Pub. L. 98-369, §314(c)(1), added par. (4). 1980—Subsec. (b). Pub. L. 96-596, §2(a)(1)(D), substituted “taxable period” for “correction period”.

Subsec. (d)(2). Pub. L. 96-596, §2(a)(2)(C), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings or the date on which the tax imposed by subsec. (a) of this section in respect to such holdings is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings.

Subsec. (d)(3), (4). Pub. L. 96-596, §2(a)(3)(C), (4)(B), redesignated par. (4) as (3), and in subpar. (A) of par. (3) as so redesignated, substituted “section 4942(j)(4)” for “section 4942(j)(5)”, and struck out par. (3), which defined correction period, with respect to excess business holdings of a private foundation in a business enterprise, as the period ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to permit orderly disposition of such excess business holdings.

1976—Subsecs. (c), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

**EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by section 1212(c) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Pub. L. 109-280, title XII, §1233(b), Aug. 17, 2006, 120 Stat. 1100, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 109-280, title XII, §1243(b), Aug. 17, 2006, 120 Stat. 1107, provided that: “The amendment made by this section [amending this section] shall apply to tax-

able years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §307(b), July 18, 1984, 98 Stat. 785, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to business holdings with respect to which the 5-year period described in section 4943(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends on or after November 1, 1983.

“(2) TRANSITIONAL RULE.—Any plan submitted to the Secretary of the Treasury or his delegate on or before the 60th day after the date of the enactment of this Act [July 18, 1984] shall be treated as submitted before the close of the initial 5-year period referred to in section 4943(c)(7)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)).”

Pub. L. 98-369, div. A, title III, §308(b), July 18, 1984, 98 Stat. 785, provided that: “The amendment made by subsection (a) [amending this section] shall apply to increases and decreases occurring after the date of the enactment of this Act [July 18, 1984].”

Pub. L. 98-369, div. A, title III, §309(b), July 18, 1984, 98 Stat. 785, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 101(b) of the Tax Reform Act of 1969 [section 101(b) of Pub. L. 91-172 which enacted this section].”

Pub. L. 98-369, div. A, title III, §310(b), July 18, 1984, 98 Stat. 786, provided that: “The amendment made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [July 18, 1984].”

Pub. L. 98-369, div. A, title III, §314(c)(2), July 18, 1984, 98 Stat. 788, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [July 18, 1984].”

#### EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

#### SAVINGS PROVISION

Applicability of section to private foundations, see section 101(l)(4) of Pub. L. 91-172, set out as a note under section 4940 of this title.

### § 4944. Taxes on investments which jeopardize charitable purpose

#### (a) Initial taxes

##### (1) On the private foundation

If a private foundation invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, there is hereby imposed on the making of such investment a tax equal to 10 percent of the amount so invested for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by the private foundation.

##### (2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in the making of the investment, knowing that it is jeopardizing the carrying out of any of the foundation's exempt purposes, a tax equal to 10 percent of the amount so invested for each

year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the making of the investment.

#### (b) Additional taxes

##### (1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on the making of an investment and such investment is not removed from jeopardy within the taxable period, there is hereby imposed a tax equal to 25 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by the private foundation.

##### (2) On the management

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the removal from jeopardy, there is hereby imposed a tax equal to 5 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the removal from jeopardy.

#### (c) Exception for program-related investments

For purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.

#### (d) Special rules

For purposes of subsections (a) and (b)—

##### (1) Joint and several liability

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to any one investment, all such persons shall be jointly and severally liable under such paragraph with respect to such investment.

##### (2) Limit for management

With respect to any one investment, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$20,000.

#### (e) Definitions

For purposes of this section—

##### (1) Taxable period

The term “taxable period” means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which the amount is so invested and ending on the earliest of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which the amount so invested is removed from jeopardy.

##### (2) Removal from jeopardy

An investment which jeopardizes the carrying out of exempt purposes shall be considered

to be removed from jeopardy when such investment is sold or otherwise disposed of, and the proceeds of such sale or other disposition are not investments which jeopardize the carrying out of exempt purposes.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 511; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-596, §2(a)(1)(E), (2)(D), (3)(D), Dec. 24, 1980, 94 Stat. 3469-3471; Pub. L. 109-280, title XII, §1212(d), Aug. 17, 2006, 120 Stat. 1074.)

#### CODIFICATION

Section 1212(d) of Pub. L. 109-280, which directed the amendment of section 4944 without specifying the act to be amended, was executed to this section, which is section 4944 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-280, §1212(d)(1), substituted “10 percent” for “5 percent” in pars. (1) and (2). See Codification note above.

Subsec. (d)(2). Pub. L. 109-280, §1212(d)(2), substituted “\$10,000,” for “\$5,000,” and “\$20,000.” for “\$10,000.” See Codification note above.

1980—Subsec. (b)(1). Pub. L. 96-596, §2(a)(1)(E), substituted “taxable period” for “correction period”.

Subsec. (e)(1)(B), (C). Pub. L. 96-596, §2(a)(2)(D), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(3). Pub. L. 96-596, §2(a)(3)(D), struck out par. (3), which defined correction period, with respect to any investment which jeopardizes the carrying out of exempt purposes, as the period beginning with the date on which such investment is entered into and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about removal from jeopardy.

1976—Subsec. (e)(3)(B). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

### § 4945. Taxes on taxable expenditures

#### (a) Initial taxes

##### (1) On the foundation

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

##### (2) On the management

There is hereby imposed on the agreement of any foundation manager to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax

imposed by this paragraph shall be paid by any foundation manager who agreed to the making of the expenditure.

#### (b) Additional taxes

##### (1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the private foundation.

##### (2) On the management

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

#### (c) Special rules

For purposes of subsections (a) and (b)—

##### (1) Joint and several liability

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

##### (2) Limit for management

With respect to any one taxable expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$20,000.

#### (d) Taxable expenditure

For purposes of this section, the term “taxable expenditure” means any amount paid or incurred by a private foundation—

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

(4) as a grant to an organization unless—

(A) such organization—

(i) is described in paragraph (1) or (2) of section 509(a),

(ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or

(iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

(5) for any purpose other than one specified in section 170(c)(2)(B).

**(e) Activities within subsection (d)(1)**

For purposes of subsection (d)(1), the term “taxable expenditure” means any amount paid or incurred by a private foundation for—

- (1) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and
- (2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be),

other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

**(f) Nonpartisan activities carried on by certain organizations**

Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

- (1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),
- (2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,
- (3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,
- (4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and
- (5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of

such organization. Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

**(g) Individual grants**

Subsection (d)(3) shall not apply to an individual grant awarded on an objective and non-discriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that—

- (1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),
- (2) the grant constitutes a prize or award which is subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipient of such prize or award is selected from the general public, or
- (3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

**(h) Expenditure responsibility**

The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures—

- (1) to see that the grant is spent solely for the purpose for which made,
- (2) to obtain full and complete reports from the grantee on how the funds are spent, and
- (3) to make full and detailed reports with respect to such expenditures to the Secretary.

**(i) Other definitions**

For purposes of this section—

**(1) Correction**

The terms “correction” and “correct” mean, with respect to any taxable expenditure, (A) recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary by regulations, or (B) in the case of a failure to comply with subsection (h)(2) or (h)(3), obtaining or making the report in question.

**(2) Taxable period**

The term “taxable period” means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

- (A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or
- (B) the date on which the tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 512; amended Pub. L. 94-455, title XIX, §§1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96-596, §2(a)(1)(F), (2)(E), Dec. 24, 1980, 94 Stat. 3469, 3470; Pub. L. 98-369,

div. A, title III, §302(b), July 18, 1984, 98 Stat. 780; Pub. L. 99-514, title I, §122(a)(2)(B), Oct. 22, 1986, 100 Stat. 2110; Pub. L. 100-647, title I, §1001(d)(1)(B), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109-280, title XII, §§1212(e), 1244(b), Aug. 17, 2006, 120 Stat. 1074, 1107; Pub. L. 113-295, div. A, title II, §221(a)(106), Dec. 19, 2014, 128 Stat. 4053.)

#### REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

#### CODIFICATION

Sections 1212(e) and 1244(b) of Pub. L. 109-280, which directed the amendment of section 4945 without specifying the act to be amended, were executed to this section, which is section 4945 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

#### AMENDMENTS

2014—Subsec. (f). Pub. L. 113-295 struck out “(excluding therefrom any preceding taxable year which begins before January 1, 1970)” after “taxable years of such organization” in concluding provisions.

2006—Subsec. (a)(1). Pub. L. 109-280, §1212(e)(1)(A), substituted “20 percent” for “10 percent”. See Codification note above.

Subsec. (a)(2). Pub. L. 109-280, §1212(e)(1)(B), substituted “5 percent” for “2½ percent”. See Codification note above.

Subsec. (c)(2). Pub. L. 109-280, §1212(e)(2), substituted “\$10,000,” for “\$5,000,” and “\$20,000.” for “\$10,000.” See Codification note above.

Subsec. (d)(4)(A). Pub. L. 109-280, §1244(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or”. See Codification note above.

1988—Subsec. (g)(1). Pub. L. 100-647 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).”

1986—Subsec. (g)(2). Pub. L. 99-514 inserted “(without regard to paragraph (3) thereof)” after “section 74(b)”.

1984—Subsec. (d)(4). Pub. L. 98-369, in amending par. (4) generally, divided existing provisions into subpars. (A) and (B) and inserted reference in subpar. (A) to exempt foundations (as defined in section 4940(d)(2)).

1980—Subsec. (b)(1). Pub. L. 96-596, §2(a)(1)(F), substituted “taxable period” for “correction period”.

Subsec. (i)(2). Pub. L. 96-596, §2(a)(2)(E), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines to be reasonable and necessary, except that such determination not be made with respect to any taxable expenditure within the meaning of pars. (1), (2), (3), or (4) of subsec. (d) of this section because of any action by an appropriate State officer.

1976—Subsec. (g). Pub. L. 94-455, §§1901(b)(8)(H), 1906(b)(13)(A), struck out in provisions preceding par.

(1) “or his delegate” after “Secretary” and substituted in par. (1) “educational organization described in section 170(b)(1)(A)(ii)” for “educational institution described in section 151(e)(4)”.

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

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(e) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Amendment by section 1244(b) of Pub. L. 109-280 applicable to distributions and expenditures after Aug. 17, 2006, see section 1244(c) of Pub. L. 109-280, set out as a note under section 4942 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §302(c)(2), July 18, 1984, 98 Stat. 781, provided that: “The amendment made by subsection (b) [amending this section] shall apply to grants made after December 31, 1984, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

#### SAVINGS PROVISION

Applicability of subsecs. (d)(4) and (h) of this section to grants to private foundations described in section 101(l)(C)(3) of Pub. L. 91-172, see section 101(l)(5) of Pub. L. 91-172, set out as a note under section 4940 of this title.

### § 4946. Definitions and special rules

#### (a) Disqualified person

##### (1) In general

For purposes of this subchapter, the term “disqualified person” means, with respect to a private foundation, a person who is—

- (A) a substantial contributor to the foundation,
- (B) a foundation manager (within the meaning of subsection (b)(1)),
- (C) an owner of more than 20 percent of—
  - (i) the total combined voting power of a corporation,
  - (ii) the profits interest of a partnership,
  - or
  - (iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

## **(2) Substantial contributors**

For purposes of paragraph (1), the term “substantial contributor” means a person who is described in section 507(d)(2).

## **(3) Stockholdings**

For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

## **(4) Partnerships; trusts**

For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

## **(b) Foundation manager**

For purposes of this subchapter, the term “foundation manager” means, with respect to any private foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

## **(c) Government official**

For purposes of subsection (a)(1)(I) and section 4941, the term “government official” means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a “special Government employee”, as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of \$15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of \$20,000 or more,

(6) a position as personal or executive assistant or secretary to any of the foregoing, or

(7) a member of the Internal Revenue Service Oversight Board.

## **(d) Members of family**

For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 515; amended Pub. L. 95-227, §4(c)(2)(B), Feb. 10, 1978, 92 Stat. 22; Pub. L. 98-369, div. A, title III, §306(a), July 18, 1984, 98 Stat. 784; Pub. L. 99-514, title XVI, §1606(a), Oct. 22, 1986, 100 Stat. 2771; Pub. L. 105-206, title I, §1101(c)(1), July 22, 1998, 112 Stat. 696; Pub. L. 106-554, §1(a)(7) [title III, §319(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A-647.)

## **AMENDMENTS**

2000—Subsec. (c)(3)(B). Pub. L. 106-554 substituted “the lowest rate of basic pay for the Senior Executive Service under section 5382” for “the lowest rate of compensation prescribed for GS-16 of the General Schedule under section 5332”.

1998—Subsec. (c)(7). Pub. L. 105-206 added par. (7).

1986—Subsec. (c)(5). Pub. L. 99-514 substituted “\$20,000” for “\$15,000”.

1984—Subsec. (d). Pub. L. 98-369 amended subsec. (d) generally, substituting references to children, grandchildren, and great grandchildren for references to lineal descendants in two places.

1978—Subsecs. (a)(1), (b). Pub. L. 95-227 substituted “subchapter” for “chapter”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVI, §1606(b), Oct. 22, 1986, 100 Stat. 2771, provided that: “The amendment made by this section [amending this section] shall apply to compensation received after December 31, 1985.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title III, §306(c), July 18, 1984, 98 Stat. 784, provided that: “The amendments made by this subsection [probably should be “section”, amending this section and section 6104 of this title] shall take effect on January 1, 1985.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

### § 4947. Application of taxes to certain nonexempt trusts

#### (a) Application of tax

##### (1) Charitable trusts

For purposes of part II of subchapter F of chapter 1 (other than section 508(a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

##### (2) Split-interest trusts

In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B),

(B) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055,

2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) any amounts transferred in trust before May 27, 1969.

#### (3) Segregated amounts

For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

#### (b) Special rules

##### (1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

##### (2) Limit to segregated amounts

If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

##### (3) Sections 4943 and 4944

Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trusts, or

(B) a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

##### (4) Section 507

The provisions of section 507(a) shall not apply to a trust which is described in subsection (a)(2) by reason of a distribution of qualified employer securities (as defined in section 664(g)(4)) to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by section 664(g)).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 517; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XV, §1530(c)(9), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 107-16, title V, §542(e)(4), June 7, 2001, 115 Stat. 85; Pub. L. 108-357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

#### AMENDMENTS

2010—Subsec. (a)(2)(A). Pub. L. 111-312 amended subsec. (a)(2)(A) to read as if amendment by Pub. L. 107-16, §542(e)(4), had never been enacted. See 2001 Amendment note below.

2004—Subsecs. (a)(1), (2), (b)(3). Pub. L. 108-357 struck out “556(b)(2),” after “545(b)(2),” wherever appearing.



2001—Subsec. (a)(2)(A). Pub. L. 107-16, §542(e)(4), inserted “642(c),” after “170(f)(2)(B),”.

1997—Subsec. (b)(4). Pub. L. 105-34 added par. (4).

1976—Subsec. (b)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to deductions for taxable years beginning after Dec. 31, 2009, see section 542(f)(3) of Pub. L. 107-16, set out as a note under section 121 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

### § 4948. Application of taxes and denial of exemption with respect to certain foreign organizations

#### (a) Tax on income of certain foreign organizations

In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

#### (b) Certain sections inapplicable

Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

#### (c) Denial of exemption to foreign organizations engaged in prohibited transactions

##### (1) General rule

A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

##### (2) Prohibited transactions

For purposes of this subsection, the term “prohibited transaction” means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a dis-

qualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

#### (3) Taxable years affected

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction. The Secretary shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary, any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

#### (4) Disallowance of certain charitable deductions

No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

(Added Pub. L. 91-172, title I, §101(b), Dec. 30, 1969, 83 Stat. 518; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509.)

#### AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108-357 struck out “556(b)(2),” after “545(b)(2),” in introductory provisions.

1976—Subsec. (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

**Subchapter B—Black Lung Benefit Trusts**

Sec.	
4951.	Taxes on self-dealing.
4952.	Taxes on taxable expenditures.
4953.	Tax on excess contributions to black lung benefit trusts.

**§ 4951. Taxes on self-dealing****(a) Initial taxes****(1) On self-dealer**

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21). The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

**(2) On trustee**

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any such trustee who participated in the act of self-dealing.

**(b) Additional taxes****(1) On self-dealer**

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a trust described in section 501(c)(21) and in which the act is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

**(2) On trustee**

In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any such trustee who refused to agree to part or all of the correction.

**(c) Joint and several liability**

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

**(d) Self-dealing****(1) In general**

For purposes of this section, the term “self-dealing” means any direct or indirect—

(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

(B) lending of money or other extension of credit between such a trust and a disqualified person;

(C) furnishing of goods, services, or facilities between such a trust and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

**(2) Special rules**

For purposes of paragraph (1)—

(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien;

(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for the purposes specified in section 501(c)(21)(A); and

(C) the payment of compensation (and the payment or reimbursement of expenses) by such a trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

**(e) Definitions**

For purposes of this section—

**(1) Taxable period**

The term “taxable period” means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

**(2) Amount involved**

The term “amount involved” means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that in the case of services described in subsection (d)(2)(C), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

**(3) Correction**

The terms “correction” and “correct” mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the trust in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

**(4) Disqualified person**

The term “disqualified person” means, with respect to a trust described in section 501(c)(21), a person who is—

- (A) a contributor to the trust,
- (B) a trustee of the trust,
- (C) an owner of more than 10 percent of—
  - (i) the total combined voting power of a corporation,
  - (ii) the profits interest of a partnership, or
  - (iii) the beneficial interest of a trust or unincorporated enterprise,

which is a contributor to the trust,

- (D) an officer, director, or employee of a person who is a contributor to the trust,

(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the total combined voting power,

(G) a partnership in which persons described in subparagraph (A), (B), (C), (D), or (E), own more than 35 percent of the profits interest, or

(H) a trust or estate in which persons described in subparagraph (A), (B), (C), (D), or (E), hold more than 35 percent of the beneficial interest.

For purposes of subparagraphs (C)(i) and (F), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph. For purposes of subparagraphs (C) (ii) and (iii), (G), and (H), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph.

**(f) Payments of benefits**

For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in subclause (I) or (IV) of section 501(c)(21)(A)(i) shall not be considered an act of self-dealing.

(Added Pub. L. 95-227, §4(c)(1), Feb. 10, 1978, 92 Stat. 18; amended Pub. L. 96-596, §2(a)(1)(G), (H), (2)(F), (3)(E), Dec. 24, 1980, 94 Stat. 3469-3471; Pub. L. 102-486, title XIX, §1940(b), Oct. 24, 1992, 106 Stat. 3035.)

## AMENDMENTS

1992—Subsec. (f). Pub. L. 102-486 substituted “subclause (I) or (IV) of section 501(c)(21)(A)(i)” for “clause (i) of section 501(c)(21)(A)”.

1980—Subsec. (b)(1). Pub. L. 96-596, §2(a)(1)(G), substituted “taxable period” for “correction period”.

Subsec. (e)(1)(B), (C). Pub. L. 96-596, §2(a)(2)(F), added subpar. (B) and redesignated former subpar. (B) as (C). Subsec. (e)(2)(B). Pub. L. 96-596, §2(a)(1)(H), substituted “taxable period” for “correction period”.

Subsec. (e)(4), (5). Pub. L. 96-596, §2(a)(3)(E), redesignated par. (5) as (4) and struck out former par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102-486, set out as a note under section 192 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

## EFFECTIVE DATE

Subchapter effective with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as a note under section 192 of this title.

**§ 4952. Taxes on taxable expenditures****(a) Tax imposed****(1) On the fund**

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

**(2) On the trustee**

There is hereby imposed on the agreement of any trustee of such a trust to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by the trustee who agreed to the making of the expenditure.

**(b) Additional taxes****(1) On the fund**

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

**(2) On the trustee**

In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any trustee who refused to agree to part or all of the correction.

**(c) Joint and several liability**

For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

**(d) Taxable expenditure**

For purposes of this section, the term “taxable expenditure” means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section.

**(e) Definitions****(1) Correction**

The terms “correction” and “correct” mean, with respect to any taxable expenditure, recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made.

**(2) Taxable period**

The term “taxable period” means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

- (A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or
- (B) the date on which the tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 95-227, §4(c)(1), Feb. 10, 1978, 92 Stat. 21; amended Pub. L. 96-596, §2(a)(1)(I), (2)(G), Dec. 24, 1980, 94 Stat. 3469, 3471.)

**AMENDMENTS**

1980—Subsec. (b)(1). Pub. L. 96-596, §2(a)(1)(I), substituted “taxable period” for “correction period”.

Subsec. (e)(2). Pub. L. 96-596, §2(a)(2)(G), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any

other period which the Secretary determines reasonable and necessary to bring about the correction of the taxable expenditure.

**EFFECTIVE DATE OF 1980 AMENDMENT**

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

**§ 4953. Tax on excess contributions to black lung benefit trusts****(a) Tax imposed**

There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

**(b) Excess contribution**

For purposes of this section, the term “excess contribution” means the sum of—

- (1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and
- (2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

- (A) the excess of the maximum amount allowable as a deduction under section 192 for the taxable year over the amount contributed to the trust or trusts for the taxable year, and
- (B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

**(c) Treatment of withdrawal of excess contributions**

Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

- (1) an act of self-dealing (within the meaning of section 4951),
- (2) a taxable expenditure (within the meaning of section 4952), or
- (3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).

(Added Pub. L. 95-227, §4(c)(1), Feb. 10, 1978, 92 Stat. 22.)

**Subchapter C—Political Expenditures of Section 501(c)(3) Organizations**

Sec.  
4955.

Taxes on political expenditures of section 501(c)(3) organizations.

**PRIOR PROVISIONS**

A prior subchapter C, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

**§ 4955. Taxes on political expenditures of section 501(c)(3) organizations**

**(a) Initial taxes**

**(1) On the organization**

There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

**(2) On the management**

There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

**(b) Additional taxes**

**(1) On the organization**

In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

**(2) On the management**

In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

**(c) Special rules**

For purposes of subsections (a) and (b)—

**(1) Joint and several liability**

If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

**(2) Limit for management**

With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$10,000.

**(d) Political expenditure**

For purposes of this section—

**(1) In general**

The term “political expenditure” means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

**(2) Certain other expenditures included**

In the case of an organization which is formed primarily for purposes of promoting

the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term “political expenditure” includes any of the following amounts paid or incurred by the organization:

(A) Amounts paid or incurred to such individual for speeches or other services.

(B) Travel expenses of such individual.

(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

(D) Expenses of advertising, publicity, and fundraising for such individual.

(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

**(e) Coordination with sections 4945 and 4958**

If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945 or an excess benefit for purposes of section 4958.

**(f) Other definitions**

For purposes of this section—

**(1) Section 501(c)(3) organization**

The term “section 501(c)(3) organization” means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

**(2) Organization manager**

The term “organization manager” means—

(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

**(3) Correction**

The terms “correction” and “correct” mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

**(4) Taxable period**

The term “taxable period” means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 100-203, title X, § 10712(a), Dec. 22, 1987, 101 Stat. 1330-465; amended Pub. L. 104-168, title XIII, § 1311(c)(1), July 30, 1996, 110 Stat. 1478.)

## AMENDMENTS

1996—Subsec. (e). Pub. L. 104-168 substituted “sections 4945 and 4958” for “section 4945” in heading and inserted “or an excess benefit for purposes of section 4958” before period at end of text.

## EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-168, title XIII, §1311(d)(1), (2), July 30, 1996, 110 Stat. 1478, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 4958 of this title and amending this section and sections 4963, 6213, 7422, and 7454 of this title] (other than subsection (b)) [amending section 501 of this title] shall apply to excess benefit transactions occurring on or after September 14, 1995.

“(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.”

## EFFECTIVE DATE

Pub. L. 100-203, title X, §10712(d), Dec. 22, 1987, 101 Stat. 1330-468, provided that: “The amendments made by this section [enacting this section and amending sections 4962, 4963, 6213, 6501, 6503, 6684, 7422, and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987].”

### Subchapter D—Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements

Sec.	
4958.	Taxes on excess benefit transactions.
4959.	Taxes on failures by hospital organizations.
4960.	Tax on excess tax-exempt organization executive compensation.

## PRIOR PROVISIONS

A prior subchapter D, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

## AMENDMENTS

2017—Pub. L. 115-97, title I, §13602(b), Dec. 22, 2017, 131 Stat. 2159, added item 4960.

2010—Pub. L. 111-148, title IX, §9007(b)(2), Mar. 23, 2010, 124 Stat. 857, added item 4959.

## § 4958. Taxes on excess benefit transactions

### (a) Initial taxes

#### (1) On the disqualified person

There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

#### (2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

### (b) Additional tax on the disqualified person

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such

transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

### (c) Excess benefit transaction; excess benefit

For purposes of this section—

#### (1) Excess benefit transaction

##### (A) In general

The term “excess benefit transaction” means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

##### (B) Excess benefit

The term “excess benefit” means the excess referred to in subparagraph (A).

#### (2) Special rules for donor advised funds

In the case of any donor advised fund (as defined in section 4966(d)(2))—

(A) the term “excess benefit transaction” includes any grant, loan, compensation, or other similar payment from such fund to a person described in subsection (f)(7) with respect to such fund, and

(B) the term “excess benefit” includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other similar payment.

#### (3) Special rules for supporting organizations

##### (A) In general

In the case of any organization described in section 509(a)(3)—

(i) the term “excess benefit transaction” includes—

(I) any grant, loan, compensation, or other similar payment provided by such organization to a person described in subparagraph (B), and

(II) any loan provided by such organization to a disqualified person (other than an organization described in subparagraph (C)(ii)), and

(ii) the term “excess benefit” includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other similar payment.

##### (B) Person described

A person is described in this subparagraph if such person is—

(i) a substantial contributor to such organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting “persons described in clause (i) or (ii) of section 4958(c)(3)(B)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof).

**(C) Substantial contributor**

For purposes of this paragraph—

**(i) In general**

The term “substantial contributor” means any person who contributed or bequeathed an aggregate amount of more than \$5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust. Rules similar to the rules of subparagraphs (B) and (C) of section 507(d)(2) shall apply for purposes of this subparagraph.

**(ii) Exception**

Such term shall not include—

- (I) any organization described in paragraph (1), (2), or (4) of section 509(a), and
- (II) any organization which is treated as described in such paragraph (2) by reason of the last sentence of section 509(a) and which is a supported organization (as defined in section 509(f)(3)) of the organization to which subparagraph (A) applies.

**(4) Authority to include certain other private inurement**

To the extent provided in regulations prescribed by the Secretary, the term “excess benefit transaction” includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

**(d) Special rules**

For purposes of this section—

**(1) Joint and several liability**

If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

**(2) Limit for management**

With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$20,000.

**(e) Applicable tax-exempt organization**

For purposes of this subchapter, the term “applicable tax-exempt organization” means—

- (1) any organization which (without regard to any excess benefit) would be described in

paragraph (3), (4), or (29) of section 501(c) and exempt from tax under section 501(a), and

- (2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

**(f) Other definitions**

For purposes of this section—

**(1) Disqualified person**

The term “disqualified person” means, with respect to any transaction—

- (A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

- (B) a member of the family of an individual described in subparagraph (A),

- (C) a 35-percent controlled entity,

- (D) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) and organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.<sup>1</sup>

- (E) which involves a donor advised fund (as defined in section 4966(d)(2)), any person who is described in paragraph (7) with respect to such donor advised fund (as so defined), and

- (F) which involves a sponsoring organization (as defined in section 4966(d)(1)), any person who is described in paragraph (8) with respect to such sponsoring organization (as so defined).

**(2) Organization manager**

The term “organization manager” means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

**(3) 35-percent controlled entity**

**(A) In general**

The term “35-percent controlled entity” means—

- (i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

- (ii) a partnership in which such persons own more than 35 percent of the profits interest, and

- (iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

**(B) Constructive ownership rules**

Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

**(4) Family members**

The members of an individual’s family shall be determined under section 4946(d); except

<sup>1</sup> So in original. The period probably should be a comma.

that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

**(5) Taxable period**

The term “taxable period” means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

**(6) Correction**

The terms “correction” and “correct” mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards, except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund.

**(7) Donors and donor advisors**

For purposes of paragraph (1)(E), a person is described in this paragraph if such person—

(A) is described in section 4966(d)(2)(A)(iii),

(B) is a member of the family of an individual described in subparagraph (A), or

(C) is a 35-percent controlled entity (as defined in paragraph (3) by substituting “persons described in subparagraph (A) or (B) of paragraph (7)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof).

**(8) Investment advisors**

For purposes of paragraph (1)(F)—

**(A) In general**

A person is described in this paragraph if such person—

(i) is an investment advisor,

(ii) is a member of the family of an individual described in clause (i), or

(iii) is a 35-percent controlled entity (as defined in paragraph (3) by substituting “persons described in clause (i) or (ii) of paragraph (8)(A)” for “persons described in subparagraph (A) or (B) of paragraph (1)” in subparagraph (A)(i) thereof).

**(B) Investment advisor defined**

For purposes of subparagraph (A), the term “investment advisor” means, with respect to any sponsoring organization (as defined in section 4966(d)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4966(d)(2)) owned by such organization.

(Added Pub. L. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475; amended Pub. L. 109-280,

title XII, §§1212(a)(3), 1232(a), (b), 1242(a), (b), Aug. 17, 2006, 120 Stat. 1074, 1098, 1099, 1104; Pub. L. 110-172, §3(i), Dec. 29, 2007, 121 Stat. 2475; Pub. L. 111-148, title I, §1322(h)(3), Mar. 23, 2010, 124 Stat. 192.)

**CODIFICATION**

Sections 1212(a)(3), 1232(a), (b), and 1242(a), (b) of Pub. L. 109-280, which directed the amendment of section 4958 without specifying the act to be amended, were executed to this section, which is section 4958 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

**AMENDMENTS**

2010—Subsec. (e)(1). Pub. L. 111-148 substituted “paragraph (3), (4), or (29)” for “paragraph (3) or (4)”.

2007—Subsec. (c)(3)(A)(i)(II). Pub. L. 110-172, §3(i)(1), substituted “subparagraph (C)(ii)” for “paragraph (1), (2), or (4) of section 509(a)”.

Subsec. (c)(3)(C)(ii). Pub. L. 110-172, §3(i)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a).”

2006—Subsec. (c)(2). Pub. L. 109-280, §1232(b)(1), added par. (2). Former par. (2) redesignated (3). See Codification note above.

Subsec. (c)(3). Pub. L. 109-280, §1242(b), added par. (3). Former par. (3) redesignated (4). See Codification note above.

Pub. L. 109-280, §1232(b)(1), redesignated par. (2) as (3). See Codification note above.

Subsec. (c)(4). Pub. L. 109-280, §1242(b), redesignated par. (3) as (4). See Codification note above.

Subsec. (d)(2). Pub. L. 109-280, §1212(a)(3), substituted “\$20,000” for “\$10,000”. See Codification note above.

Subsec. (f)(1)(D). Pub. L. 109-280, §1242(a), added subpar. (D). Former subpar. (D) redesignated (E). See Codification note above.

Pub. L. 109-280, §1232(a)(1), added subpar. (D). See Codification note above.

Subsec. (f)(1)(E). Pub. L. 109-280, §1242(a), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F). See Codification note above.

Pub. L. 109-280, §1232(a)(1), added subpar. (E). See Codification note above.

Subsec. (f)(1)(F). Pub. L. 109-280, §1242(a), redesignated subpar. (E) as (F). See Codification note above.

Subsec. (f)(6). Pub. L. 109-280, §1232(b)(2), inserted “, except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund” after “standards”. See Codification note above.

Subsec. (f)(7), (8). Pub. L. 109-280, §1232(a)(2), added pars. (7) and (8). See Codification note above.

**EFFECTIVE DATE OF 2007 AMENDMENT**

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

**EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by section 1212(a)(3) of Pub. L. 109-280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109-280, set out as a note under section 4941 of this title.

Pub. L. 109-280, title XII, §1232(c), Aug. 17, 2006, 120 Stat. 1099, provided that: “The amendments made by this section [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 109-280, title XII, §1242(c), Aug. 17, 2006, 120 Stat. 1105, provided that:

“(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to trans-



actions occurring after the date of the enactment of this Act [Aug. 17, 2006].

“(2) SUBSECTION (b).—The amendments made by subsection (a) [probably should be “subsection (b)”], amending this section] shall apply to transactions occurring after July 25, 2006.”

#### EFFECTIVE DATE

Section applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as an Effective Date of 1996 Amendment note under section 4955 of this title.

### § 4959. Taxes on failures by hospital organizations

If a hospital organization to which section 501(r) applies fails to meet the requirement of section 501(r)(3) for any taxable year, there is imposed on the organization a tax equal to \$50,000.

(Added Pub. L. 111-148, title IX, § 9007(b)(1), Mar. 23, 2010, 124 Stat. 857.)

#### EFFECTIVE DATE

Section applicable to failures occurring after Mar. 23, 2010, see section 9007(f)(3) of Pub. L. 111-148, set out as an Effective Date of 2010 Amendment note under section 501 of this title.

### § 4960. Tax on excess tax-exempt organization executive compensation

#### (a) Tax imposed

There is hereby imposed a tax equal to the product of the rate of tax under section 11 and the sum of—

(1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of \$1,000,000, plus

(2) any excess parachute payment paid by such an organization to any covered employee.

For purposes of the preceding sentence, remuneration shall be treated as paid when there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)) of the rights to such remuneration.

#### (b) Liability for tax

The employer shall be liable for the tax imposed under subsection (a).

#### (c) Definitions and special rules

For purposes of this section—

##### (1) Applicable tax-exempt organization

The term “applicable tax-exempt organization” means any organization which for the taxable year—

(A) is exempt from taxation under section 501(a),

(B) is a farmers’ cooperative organization described in section 521(b)(1),

(C) has income excluded from taxation under section 115(1), or

(D) is a political organization described in section 527(e)(1).

##### (2) Covered employee

For purposes of this section, the term “covered employee” means any employee (includ-

ing any former employee) of an applicable tax-exempt organization if the employee—

(A) is one of the 5 highest compensated employees of the organization for the taxable year, or

(B) was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

### (3) Remuneration

For purposes of this section:

#### (A) In general

The term “remuneration” means wages (as defined in section 3401(a)), except that such term shall not include any designated Roth contribution (as defined in section 402A(c)) and shall include amounts required to be included in gross income under section 457(f).

#### (B) Exception for remuneration for medical services

The term “remuneration” shall not include the portion of any remuneration paid to a licensed medical professional (including a veterinarian) which is for the performance of medical or veterinary services by such professional.

### (4) Remuneration from related organizations

#### (A) In general

Remuneration of a covered employee by an applicable tax-exempt organization shall include any remuneration paid with respect to employment of such employee by any related person or governmental entity.

#### (B) Related organizations

A person or governmental entity shall be treated as related to an applicable tax-exempt organization if such person or governmental entity—

(i) controls, or is controlled by, the organization,

(ii) is controlled by one or more persons which control the organization,

(iii) is a supported organization (as defined in section 509(f)(3)) during the taxable year with respect to the organization,

(iv) is a supporting organization described in section 509(a)(3) during the taxable year with respect to the organization, or

(v) in the case of an organization which is a voluntary employees’ beneficiary association described in section 501(c)(9), establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association.

#### (C) Liability for tax

In any case in which remuneration from more than one employer is taken into account under this paragraph in determining the tax imposed by subsection (a), each such employer shall be liable for such tax in an amount which bears the same ratio to the total tax determined under subsection (a) with respect to such remuneration as—

(i) the amount of remuneration paid by such employer with respect to such employee, bears to

(ii) the amount of remuneration paid by all such employers to such employee.

**(5) Excess parachute payment**

For purposes of determining the tax imposed by subsection (a)(2)—

**(A) In general**

The term “excess parachute payment” means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

**(B) Parachute payment**

The term “parachute payment” means any payment in the nature of compensation to (or for the benefit of) a covered employee if—

(i) such payment is contingent on such employee’s separation from employment with the employer, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such separation equals or exceeds an amount equal to 3 times the base amount.

**(C) Exception**

Such term does not include any payment—

(i) described in section 280G(b)(6) (relating to exemption for payments under qualified plans),

(ii) made under or to an annuity contract described in section 403(b) or a plan described in section 457(b),

(iii) to a licensed medical professional (including a veterinarian) to the extent that such payment is for the performance of medical or veterinary services by such professional, or

(iv) to an individual who is not a highly compensated employee as defined in section 414(q).

**(D) Base amount**

Rules similar to the rules of 280G(b)(3) shall apply for purposes of determining the base amount.

**(E) Property transfers; present value**

Rules similar to the rules of paragraphs (3) and (4) of section 280G(d) shall apply.

**(6) Coordination with deduction limitation**

Remuneration the deduction for which is not allowed by reason of section 162(m) shall not be taken into account for purposes of this section.

**(d) Regulations**

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance of the tax under this section, including regulations to prevent avoidance of such tax through the performance of services other than as an employee or by providing compensation through a pass-through or other entity to avoid such tax.

(Added Pub. L. 115-97, title I, §13602(a), Dec. 22, 2017, 131 Stat. 2157.)

**EFFECTIVE DATE**

Pub. L. 115-97, title I, §13602(c), Dec. 22, 2017, 131 Stat. 2159, provided that: “The amendments made by this

section [enacting this section] shall apply to taxable years beginning after December 31, 2017.”

**Subchapter E—Abatement of First and Second Tier Taxes in Certain Cases**

Sec.

4961. Abatement of second tier taxes where there is correction.

4962. Abatement of first tier taxes in certain cases.

4963. Definitions.

**AMENDMENTS**

1996—Pub. L. 104-168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475, redesignated former subchapter D as E.

1987—Pub. L. 100-203, title X, §10712(a), (b)(5), Dec. 22, 1987, 101 Stat. 1330-465, 1330-467, redesignated former subchapter C as D, and struck out “private foundation” before “first tier taxes” in item 4962.

1984—Pub. L. 98-369, div. A, title III, §305(b)(1), (2), July 18, 1984, 98 Stat. 783, substituted “Abatement of First and Second Tier Taxes in Certain Cases” for “Abatement of Second Tier Taxes Where There Is Correction During Correction Period” in the subchapter heading, added item 4962, and renumbered former item 4962 as 4963.

**§ 4961. Abatement of second tier taxes where there is correction**

**(a) General rule**

If any taxable event is corrected during the correction period for such event, then any second tier tax imposed with respect to such event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

**(b) Supplemental proceeding**

If the determination by a court that the taxpayer is liable for a second tier tax has become final, such court shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period. Such a supplemental proceeding may be begun only during the period which ends on the 90th day after the last day of the correction period. Where such a supplemental proceeding has begun, the reference in the second sentence of section 6213(a) to a final decision of the Tax Court shall be treated as including a final decision in such supplemental proceeding.

**(c) Suspension of period of collection for second tier tax**

**(1) Proceeding in District Court or United States Court of Federal Claims**

If, not later than 90 days after the day on which the second tier tax is assessed, the first tier tax is paid in full and a claim for refund of the amount so paid is filed, no levy or proceeding in court for the collection of the second tier tax shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2) (and of any supplemental proceeding with respect thereto under subsection (b)). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the time such prohibition is in force by a proceeding in the proper court.

**(2) Suit must be brought to determine liability**

If, within 90 days after the day on which his claim for refund is denied, the person against whom the second tier tax was assessed fails to begin a proceeding described in section 7422 for the determination of his liability for such tax, paragraph (1) shall cease to apply with respect to such tax, effective on the day following the close of the 90-day period referred to in this paragraph.

**(3) Suspension of running of period of limitations on collection**

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court with respect to any second tier tax described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

**(4) Jeopardy collection**

If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

(Added Pub. L. 96-596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3472; amended Pub. L. 99-514, title XVIII, §1899A(50), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

## AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” in heading.

1986—Subsec. (c)(1). Pub. L. 99-514 substituted “United States Claims Court” for “Court of Claims” in heading.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE

Pub. L. 96-596, §2(d), Dec. 24, 1980, 94 Stat. 3474, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) **FIRST TIER TAXES.**—The amendments made by this section [enacting this section and section 4962 of this title and amending sections 4941 to 4945, 4951, 4952, 4971, 4975, 6213, 6214, 6503, and 7422 of this title] with respect to any first tier tax shall take effect as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] when such tax was first imposed.

“(2) **SECOND TIER TAXES.**—The amendments made by this section with respect to any second tier tax shall apply only with respect to taxes assessed after the date of the enactment of this Act [Dec. 24, 1980]. Nothing in the preceding sentence shall be construed to permit the assessment of a tax in a case to which, on the date of the enactment of this Act, the doctrine of res judicata applies.

“(3) **FIRST AND SECOND TIER TAX.**—For purposes of this subsection, the terms ‘first tier tax’ and ‘second tier tax’ have the respective meanings given to such terms by section 4962 of the Internal Revenue Code of 1986.”

**§ 4962. Abatement of first tier taxes in certain cases****(a) General rule**

If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

**(b) Qualified first tier tax**

For purposes of this section, the term “qualified first tier tax” means any first tier tax imposed by subchapter A, C, D, or G of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

**(c) Special rule for tax on political expenditures of section 501(c)(3) organizations**

In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting “not willful and flagrant” for “due to reasonable cause and not to willful neglect”.

(Added Pub. L. 98-369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100-203, title X, §10712(b)(1), (2), (4), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 105-34, title XVI, §1603(a), Aug. 5, 1997, 111 Stat. 1096; Pub. L. 110-172, §3(h), Dec. 29, 2007, 121 Stat. 2475.)

## PRIOR PROVISIONS

A prior section 4962 was renumbered section 4963 of this title.

## AMENDMENTS

2007—Subsec. (b). Pub. L. 110-172 substituted “D, or G” for “or D”.

1997—Subsec. (b). Pub. L. 105-34 substituted “subchapter A, C, or D” for “subchapter A or C”.

1987—Pub. L. 100-203, §10712(b)(4), struck out “private foundation” before “first tier taxes” in section catchline.

Subsec. (a). Pub. L. 100-203, §10712(b)(2), substituted “any qualified first tier tax” for “any private foundation first tier tax” in closing provisions.

Subsec. (b). Pub. L. 100-203, §10712(b)(1), added subsec. (b) and struck out former subsec. (b) “Private foundation first tier tax” which read as follows: “For purposes of this section, the term ‘private foundation first tier tax’ means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).”

Subsec. (c). Pub. L. 100-203, §10712(b)(1), added subsec. (c).

## EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XVI, §1603(c), Aug. 5, 1997, 111 Stat. 1097, provided that: “The amendments made by this section [amending this section and section 6033 of this title] shall take effect as if included in the provisions of the Taxpayer Bill of Rights 2 [Pub. L. 104-168] to which such amendments relate.”

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d)

of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

Pub. L. 98-369, div. A, title III, §305(c), July 18, 1984, 98 Stat. 784, provided that: “The amendments made by this section [enacting this section, redesignating former section 4962 as 4963, and amending sections 4942, 6213, and 6503 of this title] shall apply to taxable events occurring after December 31, 1984.”

**§ 4963. Definitions**

**(a) First tier tax**

For purposes of this subchapter, the term “first tier tax” means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4966, 4967, 4971, or 4975.

**(b) Second tier tax**

For purposes of this subchapter, the term “second tier tax” means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

**(c) Taxable event**

For purposes of this subchapter, the term “taxable event” means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4966, 4967, 4971, or 4975.

**(d) Correct**

For purposes of this subchapter—

**(1) In general**

Except as provided in paragraph (2), the term “correct” has the same meaning as when used in the section which imposes the second tier tax.

**(2) Special rules**

The term “correct” means—

(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

**(e) Correction period**

For purposes of this subchapter—

**(1) In general**

The term “correction period” means, with respect to any taxable event, the period beginning on the date on which such event occurs and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

**(2) Special rules for when taxable event occurs**

For purposes of paragraph (1), the taxable event shall be treated as occurring—

(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

(B) in the case of section 4943, on the first day on which there are excess business holdings,

(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(D) in any other case, the date on which such event occurred.

(Added Pub. L. 96-596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3473, §4962; renumbered §4963, Pub. L. 98-369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100-203, title X, §10712(b)(3), Dec. 22, 1987, 101 Stat. 1330-467; Pub. L. 104-168, title XIII, §1311(c)(2), July 30, 1996, 110 Stat. 1478; Pub. L. 109-280, title XII, §1231(b)(1), Aug. 17, 2006, 120 Stat. 1098.)

AMENDMENTS

2006—Subsecs. (a), (c). Pub. L. 109-280, which directed the insertion of “4966, 4967,” after “4958,” in subsecs. (a) and (c) of section 4963, without specifying the act to be amended, was executed by making the insertion in subsecs. (a) and (c) of this section, which is section 4963 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsecs. (a) to (c). Pub. L. 104-168 inserted “4958,” after “4955.”

1987—Subsecs. (a) to (c). Pub. L. 100-203 inserted reference to section 4955 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title XII, §1231(c), Aug. 17, 2006, 120 Stat. 1098, provided that: “The amendments made by this section [enacting subchapter G of this chapter and amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104-168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100-203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

For effective date of section with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as a note under section 4961 of this title.

**Subchapter F—Tax Shelter Transactions**

Sec.

4965.

Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.

**§ 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions**

**(a) Being a party to and approval of prohibited transactions**

**(1) Tax-exempt entity**

**(A) In general**

If a transaction is a prohibited tax shelter transaction at the time any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) becomes a party to the transaction, such entity shall pay a tax for the taxable year in which the entity becomes such a party and any subsequent taxable year in the amount determined under subsection (b)(1).

**(B) Post-transaction determination**

If any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) is a party to a subsequently listed transaction at any time during a taxable year, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1).

**(2) Entity manager**

If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

**(b) Amount of tax**

**(1) Entity**

In the case of a tax-exempt entity—

**(A) In general**

Except as provided in subparagraph (B), the amount of the tax imposed under subsection (a)(1) with respect to any transaction for a taxable year shall be an amount equal to the product of the highest rate of tax under section 11, and the greater of—

(i) the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), is attributable to such transaction, or

(II) in the case of a subsequently listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), are attributable to such transaction, or

(II) in the case of a subsequently listed transaction, are attributable to such transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

**(B) Increase in tax for certain knowing transactions**

In the case of a tax-exempt entity which knew, or had reason to know, a transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the prohibited tax shelter transaction.

This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of the enactment of this section.

**(2) Entity manager**

In the case of each entity manager, the amount of the tax imposed under subsection (a)(2) shall be \$20,000 for each approval (or other act causing participation) described in subsection (a)(2).

**(c) Tax-exempt entity**

For purposes of this section, the term "tax-exempt entity" means an entity which is—

(1) described in section 501(c) or 501(d),

(2) described in section 170(c) (other than the United States),

(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

(4) described in paragraph (1), (2), or (3) of section 4979(e),

(5) a program described in section 529,

(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 457(e)(1)(A),

(7) an arrangement described in section 4973(a), or

(8) a program described in section 529A.

**(d) Entity manager**

For purposes of this section, the term "entity manager" means—

(1) in the case of an entity described in paragraph (1), (2), or (3) of subsection (c)—

(A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and

(B) with respect to any act, the person having authority or responsibility with respect to such act, and

(2) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

**(e) Prohibited tax shelter transaction; subsequently listed transaction**

For purposes of this section—

**(1) Prohibited tax shelter transaction**

**(A) In general**

The term “prohibited tax shelter transaction” means—

- (i) any listed transaction, and
- (ii) any prohibited reportable transaction.

**(B) Listed transaction**

The term “listed transaction” has the meaning given such term by section 6707A(c)(2).

**(C) Prohibited reportable transaction**

The term “prohibited reportable transaction” means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

**(2) Subsequently listed transaction**

The term “subsequently listed transaction” means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has become a party to the transaction. Such term shall not include a transaction which is a prohibited reportable transaction at the time the entity became a party to the transaction.

**(f) Regulatory authority**

The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income or proceeds of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

**(g) Coordination with other taxes and penalties**

The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.

(Added Pub. L. 109-222, title V, § 516(a)(1), May 17, 2006, 120 Stat. 368; amended Pub. L. 110-172, § 11(a)(30), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 113-295, div. B, title I, § 102(e)(3), Dec. 19, 2014, 128 Stat. 4062.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(B) and (f), is the date of enactment of Pub. L. 109-222, which was approved May 17, 2006.

AMENDMENTS

2014—Subsec. (c)(8). Pub. L. 113-295 added par. (8).  
2007—Subsec. (c)(6). Pub. L. 110-172 substituted “section 457(e)(1)(A)” for “section 4457(e)(1)(A)”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1)

of Pub. L. 113-295, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 109-222, title V, § 516(d), May 17, 2006, 120 Stat. 372, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 6011, 6033, and 6652 of this title] shall apply to taxable years ending after the date of the enactment of this Act [May 17, 2006], with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

“(2) DISCLOSURE.—The amendments made by subsections (b) and (c) [amending sections 6011, 6033, and 6652 of this title] shall apply to disclosures the due date for which are after the date of the enactment of this Act.”

**Subchapter G—Donor Advised Funds**

Sec.

4966. Taxes on taxable distributions.

4967. Taxes on prohibited benefits.

CODIFICATION

Pub. L. 109-280, title XII, § 1231(a), Aug. 17, 2006, 120 Stat. 1094, which directed the addition of subchapter G at the end of chapter 42, without specifying the act to be amended, was executed by adding subchapter G at the end of chapter 42 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

**§ 4966. Taxes on taxable distributions**

**(a) Imposition of taxes**

**(1) On the sponsoring organization**

There is hereby imposed on each taxable distribution a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the sponsoring organization with respect to the donor advised fund.

**(2) On the fund management**

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

**(b) Special rules**

For purposes of subsection (a)—

**(1) Joint and several liability**

If more than one person is liable under subsection (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

**(2) Limit for management**

With respect to any one taxable distribution, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

**(c) Taxable distribution**

For purposes of this section—

**(1) In general**

The term “taxable distribution” means any distribution from a donor advised fund—

- (A) to any natural person, or
- (B) to any other person if—
  - (i) such distribution is for any purpose other than one specified in section 170(c)(2)(B), or
  - (ii) the sponsoring organization does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

**(2) Exceptions**

Such term shall not include any distribution from a donor advised fund—

- (A) to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization),
- (B) to the sponsoring organization of such donor advised fund, or
- (C) to any other donor advised fund.

**(d) Definitions**

For purposes of this subchapter—

**(1) Sponsoring organization**

The term “sponsoring organization” means any organization which—

- (A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof),
- (B) is not a private foundation (as defined in section 509(a)), and
- (C) maintains 1 or more donor advised funds.

**(2) Donor advised fund**

**(A) In general**

Except as provided in subparagraph (B) or (C), the term “donor advised fund” means a fund or account—

- (i) which is separately identified by reference to contributions of a donor or donors,
- (ii) which is owned and controlled by a sponsoring organization, and
- (iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor’s status as a donor.

**(B) Exceptions**

The term “donor advised fund” shall not include any fund or account—

- (i) which makes distributions only to a single identified organization or governmental entity, or
- (ii) with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, if—

(I) such person’s advisory privileges are performed exclusively by such person in the person’s capacity as a member of a committee all of the members of which are appointed by the sponsoring organization,

(II) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, di-

rectly or indirectly, such committee, and

(III) all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization, and such procedure is designed to ensure that all such grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

**(C) Secretarial authority**

The Secretary may exempt a fund or account not described in subparagraph (B) from treatment as a donor advised fund—

- (i) if such fund or account is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from such fund (and any related parties), or
- (ii) if such fund benefits a single identified charitable purpose.

**(3) Fund manager**

The term “fund manager” means, with respect to any sponsoring organization—

- (A) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and
- (B) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

**(4) Disqualified supporting organization**

**(A) In general**

The term “disqualified supporting organization” means, with respect to any distribution—

- (i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and
- (ii) any organization which is described in subparagraph (B) or (C) if—

- (I) the donor or any person designated by the donor for the purpose of advising with respect to distributions from a donor advised fund (and any related parties) directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of such organization, or
- (II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

**(B) Type I and type II supporting organizations**

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

- (i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or
- (ii) supervised or controlled in connection with one or more such organizations.

**(C) Functionally integrated type III supporting organizations**

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

(Added Pub. L. 109-280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1095.)

**EFFECTIVE DATE**

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

**§ 4967. Taxes on prohibited benefits**

**(a) Imposition of taxes**

**(1) On the donor, donor advisor, or related person**

There is hereby imposed on the advice of any person described in subsection (d) to have a sponsoring organization make a distribution from a donor advised fund which results in such person or any other person described in subsection (d) receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 125 percent of such benefit. The tax imposed by this paragraph shall be paid by any person described in subsection (d) who advises as to the distribution or who receives such a benefit as a result of the distribution.

**(2) On the fund management**

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such benefit. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

**(b) Exception**

No tax shall be imposed under this section with respect to any distribution if a tax has been imposed with respect to such distribution under section 4958.

**(c) Special rules**

For purposes of subsection (a)—

**(1) Joint and several liability**

If more than one person is liable under paragraph (1) or (2) of subsection (a) with respect to a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

**(2) Limit for management**

With respect to any one distribution described in subsection (a), the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

**(d) Person described**

A person is described in this subsection if such person is described in section 4958(f)(7) with respect to a donor advised fund.

(Added Pub. L. 109-280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1097.)

**EFFECTIVE DATE**

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

**Subchapter H—Excise Tax Based on Investment Income of Private Colleges and Universities**

**Sec.**

4968. Excise tax based on investment income of private colleges and universities.

**§ 4968. Excise tax based on investment income of private colleges and universities**

**(a) Tax imposed**

There is hereby imposed on each applicable educational institution for the taxable year a tax equal to 1.4 percent of the net investment income of such institution for the taxable year.

**(b) Applicable educational institution**

For purposes of this subchapter—

**(1) In general**

The term “applicable educational institution” means an eligible educational institution (as defined in section 25A(f)(2))—

(A) which had at least 500 students during the preceding taxable year,

(B) more than 50 percent of the students of which are located in the United States,

(C) which is not described in the first sentence of section 511(a)(2)(B) (relating to State colleges and universities), and

(D) the aggregate fair market value of the assets of which at the end of the preceding taxable year (other than those assets which are used directly in carrying out the institution's exempt purpose) is at least \$500,000 per student of the institution.

**(2) Students**

For purposes of paragraph (1), the number of students of an institution (including for purposes of determining the number of students at a particular location) shall be based on the daily average number of full-time students attending such institution (with part-time students taken into account on a full-time student equivalent basis).

**(c) Net investment income**

For purposes of this section, net investment income shall be determined under rules similar to the rules of section 4940(c).

**(d) Assets and net investment income of related organizations**

**(1) In general**

For purposes of subsections (b)(1)(C) and (c), assets and net investment income of any related organization with respect to an educational institution shall be treated as assets and net investment income, respectively, of the educational institution, except that—

(A) no such amount shall be taken into account with respect to more than 1 educational institution, and

(B) unless such organization is controlled by such institution or is described in section 509(a)(3) with respect to such institution for



the taxable year, assets and net investment income which are not intended or available for the use or benefit of the educational institution shall not be taken into account.

## (2) Related organization

For purposes of this subsection, the term “related organization” means, with respect to an educational institution, any organization which—

(A) controls, or is controlled by, such institution,

(B) is controlled by 1 or more persons which also control such institution, or

(C) is a supported organization (as defined in section 509(f)(3)), or an organization described in section 509(a)(3), during the taxable year with respect to such institution.

(Added Pub. L. 115-97, title I, §13701(a), Dec. 22, 2017, 131 Stat. 2167.)

### EFFECTIVE DATE

Pub. L. 115-97, title I, §13701(c), Dec. 22, 2017, 131 Stat. 2168, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017.”

## CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec.	
4971.	Taxes on failure to meet minimum funding standards.
4972.	Tax on nondeductible contributions to qualified employer plans.
4973.	Tax on excess contributions to certain tax-favored accounts and annuities.
4974.	Excise tax on certain accumulations in qualified retirement plans.
4975.	Tax on prohibited transactions.
4976.	Taxes with respect to funded welfare benefit plans.
4977.	Tax on certain fringe benefits provided by an employer.
4978.	Tax on certain dispositions by employee stock ownership plans and certain cooperatives.
[4978A, 4978B. Repealed.]	
4979.	Tax on certain excess contributions.
4979A.	Tax on certain prohibited allocations of qualified securities.
4980.	Tax on reversion of qualified plan assets to employer.
4980A.	Tax on excess distributions from qualified retirement plans. <sup>1</sup>
4980B.	Failure to satisfy continuation coverage requirements of group health plans.
4980C.	Requirements for issuers of qualified long-term care insurance contracts.
4980D.	Failure to meet certain group health plan requirements.
4980E.	Failure of employer to make comparable Archer MSA contributions.
4980F.	Failure of applicable plans reducing benefit accruals to satisfy notice requirements.
4980G.	Failure of employer to make comparable health savings account contributions.
4980H.	Shared responsibility for employers regarding health coverage.
4980I.	Excise tax on high cost employer-sponsored health coverage.

### AMENDMENTS

2010—Pub. L. 111-148, title I, §1513(b), title IX, §9001(b), Mar. 23, 2010, 124 Stat. 256, 853, added items 4980H and 4980I.

<sup>1</sup> Section repealed by Pub. L. 105-34 without corresponding amendment of chapter analysis.

2003—Pub. L. 108-173, title XII, §1201(d)(4)(B), Dec. 8, 2003, 117 Stat. 2478, added item 4980G.

2002—Pub. L. 107-147, title IV, §417(17)(B), Mar. 9, 2002, 116 Stat. 56, substituted “Archer MSA contributions” for “medical savings account contributions” in item 4980E.

2001—Pub. L. 107-16, title VI, §659(a)(2), June 7, 2001, 115 Stat. 139, added item 4980F.

1998—Pub. L. 105-206, title VI, §6023(18)(B), July 22, 1998, 112 Stat. 825, substituted “certain tax-favored accounts and annuities” for “individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities” in item 4973.

1996—Pub. L. 104-191, title III, §§301(c)(4)(B), 326(b), title IV, §402(b), Aug. 21, 1996, 110 Stat. 2050, 2066, 2087, added items 4980C, 4980D, and 4980E.

Pub. L. 104-188, title I, §1602(b)(5)(B), Aug. 20, 1996, 110 Stat. 1834, struck out item 4978B “Tax on disposition of employer securities to which section 133 applied”.

1989—Pub. L. 101-239, title VII, §§7301(d)(2), 7304(a)(2)(C)(iii), Dec. 19, 1989, 103 Stat. 2348, 2353, struck out item 4978A “Tax on certain dispositions of employer securities to which section 2057 applied” and added item 4978B.

1988—Pub. L. 100-647, title I, §1011A(g)(1)(B), title III, §3011(c), Nov. 10, 1988, 102 Stat. 3479, 3625, redesignated item 4981A as 4980A and added item 4980B.

1987—Pub. L. 100-203, title X, §10413(b)(2), Dec. 22, 1987, 101 Stat. 1330-438, added item 4978A.

1986—Pub. L. 99-514, title XI, §§1117(b)(2), 1121(a)(2), 1131(c)(2), 1132(b), 1133(b), title XVIII, §§1854(a)(9)(C), 1899A(75), Oct. 22, 1986, 100 Stat. 2462, 2465, 2478, 2480, 2483, 2877, 2963, added item 4972, inserted “section” in item 4973, substituted “Excise tax on certain accumulations in qualified retirement plans” for “Tax on certain accumulations in individual retirement accounts” in item 4974, struck out “and allocations” after “certain dispositions” in item 4978, and added items 4979, 4979A, 4980, and 4981A.

1984—Pub. L. 98-369, div. A, title IV, §491(d)(56), title V, §§511(c)(2), 531(e)(2), 545(b), July 18, 1984, 98 Stat. 852, 862, 886, 896, substituted “and certain individual retirement annuities” for “certain individual retirement annuities, and certain retirement bonds” in item 4973 and added items 4976 to 4978.

1982—Pub. L. 97-248, title II, §237(c)(2), Sept. 3, 1982, 96 Stat. 511, struck out item 4972 “Tax on excess contributions for self-employed individuals”.

1974—Pub. L. 93-406, title II, §§1013(b), 2001(f)(2), 2002(h)(3), Sept. 2, 1974, 88 Stat. 920, 957, 970, added chapter heading and analysis of sections 4971 to 4975.

## § 4971. Taxes on failure to meet minimum funding standards

### (a) Initial tax

If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year,

(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year, and

(3) in the case of a CSEC plan, 10 percent of the CSEC accumulated funding deficiency as of the end of the plan year ending with or within the taxable year.

### (b) Additional tax

If—

(1) a tax is imposed under subsection (a)(1) on any unpaid minimum required contribution and such amount remains unpaid as of the close of the taxable period,

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period, or

(3) a tax is imposed under subsection (a)(3) on any CSEC accumulated funding deficiency and the CSEC accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

### (c) Definitions

For purposes of this section—

#### (1) Accumulated funding deficiency

The term “accumulated funding deficiency” has the meaning given to such term by section 431.

#### (2) Correct

The term “correct” means, with respect to an accumulated funding deficiency or CSEC accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency or CSEC accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

#### (3) Taxable period

The term “taxable period” means, with respect to an accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, the period beginning with the end of the plan year in which there is an accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable<sup>1</sup> and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

#### (4) Unpaid minimum required contribution

##### (A) In general

The term “unpaid minimum required contribution” means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

##### (B) Ordering rule

Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required

contribution under section 430 for the plan year.

#### (5) CSEC accumulated funding deficiency

The term “CSEC accumulated funding deficiency” means the accumulated funding deficiency determined under section 433.

#### (d) Notification of the Secretary of Labor

Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, or

(2) to comment on the imposition of such tax.

In the case of a multiemployer plan which is in reorganization under section 418,<sup>2</sup> the same notice and opportunity shall be provided to the Pension Benefit Guaranty Corporation.

#### (e) Liability for tax

##### (1) In general

Except as provided in paragraph (2), the tax imposed by subsection (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(a)(2).

##### (2) Joint and several liability where employer member of controlled group

###### (A) In general

If an employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a), (b), (f), or (g).

###### (B) Controlled group

For purposes of subparagraph (A), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

#### (f) Failure to pay liquidity shortfall

##### (1) In general

In the case of a plan to which section 430(j)(4) or 433(f) applies, there is hereby imposed a tax of 10 percent of the excess (if any) of—

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under section 430(j) or 433(f), whichever is applicable<sup>1</sup> for such quarter (but only if such installment is paid on or before the due date for such installment).

##### (2) Additional tax

If the plan has a liquidity shortfall as of the close of any quarter and as of the close of each of the following 4 quarters, there is hereby imposed a tax equal to 100 percent of the amount

<sup>1</sup> So in original. Probably should be followed by a comma.

<sup>2</sup> See References in Text note below.

on which tax was imposed by paragraph (1) for such first quarter.

**(3) Definitions and special rule**

**(A) Liquidity shortfall; quarter**

For purposes of this subsection, the terms “liquidity shortfall” and “quarter” have the respective meanings given such terms by section 430(j) or 433(f), whichever is applicable.

**(B) Special rule**

If the tax imposed by paragraph (2) is paid with respect to any liquidity shortfall for any quarter, no further tax shall be imposed by this subsection on such shortfall for such quarter.

**(4) Waiver by Secretary**

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the liquidity shortfall described in paragraph (1) was due to reasonable cause and not willful neglect, and

(B) reasonable steps have been taken to remedy such liquidity shortfall,

the Secretary may waive all or part of the tax imposed by this subsection.

**(g) Multiemployer plans in endangered or critical status**

**(1) In general**

Except as provided in this subsection—

(A) no tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 432, and

(B) any tax imposed under this subsection for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in endangered status pursuant to section 432 shall be in addition to any other tax imposed by this section.

**(2) Failure to comply with funding improvement or rehabilitation plan**

**(A) In general**

If any funding improvement plan or rehabilitation plan in effect under section 432 with respect to a multiemployer plan requires an employer to make a contribution to the plan, there is hereby imposed a tax on each failure of the employer to make the required contribution within the time required under such plan.

**(B) Amount of tax**

The amount of the tax imposed by subparagraph (A) shall be equal to the amount of the required contribution the employer failed to make in a timely manner.

**(C) Liability for tax**

The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

**(3) Failure to meet requirements for plans in endangered or critical status**

If—

(A) a plan which is in seriously endangered status fails to meet the applicable benchmarks by the end of the funding improvement period, or

(B) a plan which is in critical status either—

(i) fails to meet the requirements of section 432(e) by the end of the rehabilitation period, or

(ii) has received a certification under section 432(b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of this section for the last plan year in such funding improvement, rehabilitation, or 3-consecutive year period (and each succeeding plan year until such benchmarks or requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such benchmarks or requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

**(4) Failure to adopt rehabilitation plan**

**(A) In general**

In the case of a multiemployer plan which is in critical status, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan within the time prescribed under section 432.

**(B) Amount of tax**

The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor for any taxable year shall be the greater of—

(i) the amount of tax imposed under subsection (a) for the taxable year (determined without regard to this subsection), or

(ii) the amount equal to \$1,100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 240-day period described in section 432(e)(1)(A) and ending on the day on which the rehabilitation plan is adopted.

**(C) Liability for tax**

**(i) In general**

The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

**(ii) Plan sponsor**

For purposes of clause (i), the term “plan sponsor” has the meaning given such term by section 432(i)(9).<sup>2</sup>

**(5) Waiver**

In the case of a failure described in paragraph (2) or (3) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this subsection. For purposes of this paragraph, reasonable cause includes unanticipated and material market fluctuations, the loss of a significant contributing employer, or other factors to the extent that the payment

of tax under this subsection with respect to the failure would be excessive or otherwise inequitable relative to the failure involved.

**(6) Terms used in section 432**

For purposes of this subsection, any term used in this subsection which is also used in section 432 shall have the meaning given such term by section 432.

**(h) Failure of a CSEC plan sponsor to adopt funding restoration plan**

**(1) In general**

In the case of a CSEC plan that is in funding restoration status (within the meaning of section 433(j)(5)(A)), there is hereby imposed a tax on the failure of such plan to adopt a funding restoration plan within the time prescribed under section 433(j)(3).

**(2) Amount of tax**

The amount of the tax imposed under paragraph (1) with respect to any plan sponsor for any taxable year shall be the amount equal to \$100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 180-day period described in section 433(j)(3) and ending on the day on which the funding restoration plan is adopted.

**(3) Waiver by Secretary**

In the case of a failure described in paragraph (1) which the Secretary determines is due to reasonable cause and not to willful neglect, the Secretary may waive a portion or all of the tax imposed by such paragraph.

**(4) Liability for tax**

The tax imposed by paragraph (1) shall be paid by the plan sponsor (within the meaning of section 433(j)(5)(E)).

**(i) Cross references**

**For disallowance of deduction for taxes paid under this section, see section 275.**

**For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).**

**For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.**

(Added Pub. L. 93-406, title II, §1013(b), Sept. 2, 1974, 88 Stat. 920; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-364, title II, §204, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 96-596, §2(a)(1)(J), (2)(H), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 100-203, title IX, §§9304(c)(1), 9305(a), Dec. 22, 1987, 101 Stat. 1330-348, 1330-351; Pub. L. 103-465, title VII, §751(a)(9)(B), Dec. 8, 1994, 108 Stat. 5020; Pub. L. 104-188, title I, §1464(a), Aug. 20, 1996, 110 Stat. 1824; Pub. L. 109-280, title I, §114(e)(1)-(4), title II, §212(b), Aug. 17, 2006, 120 Stat. 854, 855, 915; Pub. L. 110-458, title I, §§101(d)(2)(F), 102(b)(2)(I), (3)(A), Dec. 23, 2008, 122 Stat. 5099, 5103; Pub. L. 113-97, title II, §202(c)(8), (9), Apr. 7, 2014, 128 Stat. 1137, 1138.)

REFERENCES IN TEXT

Section 418, referred to in subsec. (d), was repealed by Pub. L. 113-235, div. O, title I, §108(b)(1), Dec. 16, 2014, 128 Stat. 2787.

Section 432(i)(9) of this title, referred to in subsec. (g)(4)(C)(ii), was redesignated section 432(j)(9) of this title by Pub. L. 113-235, div. O, title I, §109(b)(3), Dec. 16, 2014, 128 Stat. 2791.

Section 3002(b) of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (i), is classified to section 1202(b) of Title 29, Labor.

AMENDMENTS

2014—Subsec. (a)(3). Pub. L. 113-97, §202(c)(8)(A), added par. (3).

Subsec. (b). Pub. L. 113-97, §202(c)(8)(B)(ii), which directed substitution of “minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency” for “minimum required contributions or accumulated funding deficiency”, was executed by making the substitution for “minimum required contribution or accumulated funding deficiency” in concluding provisions, to reflect the probable intent of Congress.

Subsec. (b)(3). Pub. L. 113-97, §202(c)(8)(B)(i), added par. (3).

Subsec. (c)(2). Pub. L. 113-97, §202(c)(8)(C)(i), substituted “accumulated funding deficiency or CSEC accumulated funding deficiency” for “accumulated funding deficiency” in two places.

Subsec. (c)(3). Pub. L. 113-97, §202(c)(8)(C)(ii), substituted “accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution” for “accumulated funding deficiency or unpaid minimum required contribution” in two places in introductory provisions.

Subsec. (c)(5). Pub. L. 113-97, §202(c)(8)(C)(iii), added par. (5).

Subsec. (d)(1). Pub. L. 113-97, §202(c)(8)(D), substituted “accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution” for “accumulated funding deficiency or unpaid minimum required contribution”.

Subsec. (f)(1). Pub. L. 113-97, §202(c)(8)(E)(i), substituted “430(j)(4) or 433(f)” for “430(j)(4)” in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 113-97, §202(c)(8)(E)(ii), substituted “430(j) or 433(f), whichever is applicable” for “430(j)”.

Subsec. (f)(3)(A). Pub. L. 113-97, §202(c)(8)(E)(iii), substituted “430(j) or 433(f), whichever is applicable” for “412(m)(5)”.

Subsecs. (h), (i). Pub. L. 113-97, §202(c)(9), added subsec. (h) and redesignated former subsec. (h) as (i).

2008—Subsec. (b)(1). Pub. L. 110-458, §101(d)(2)(F)(i), substituted “minimum required” for “required minimum”.

Subsec. (c)(3). Pub. L. 110-458, §101(d)(2)(F)(ii), inserted “or unpaid minimum required contribution, whichever is applicable” after “accumulated funding deficiency” in two places in introductory provisions.

Subsec. (d)(1). Pub. L. 110-458, §101(d)(2)(F)(ii), inserted “or unpaid minimum required contribution, whichever is applicable” after “accumulated funding deficiency”.

Subsec. (e)(1). Pub. L. 110-458, §101(d)(2)(F)(iii), substituted “section 412(a)(2)” for “section 412(a)(1)(A)”.

Subsec. (e)(2)(A). Pub. L. 110-458, §102(b)(3)(A), amended directory language of Pub. L. 109-280, §212(b)(2). See 2006 Amendment note below.

Subsec. (g)(4)(B)(ii). Pub. L. 110-458, §102(b)(2)(I)(i), substituted “day following the close of” for “first day of”.

Subsec. (g)(4)(C)(ii). Pub. L. 110-458, §102(b)(2)(I)(ii), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: “For purposes of clause (i), the term ‘plan sponsor’ in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of rep-

representatives of the parties who establish or maintain the plan.”

2006—Subsecs. (a), (b). Pub. L. 109-280, §114(e)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

“(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

“(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected.”

Subsec. (c)(1). Pub. L. 109-280, §114(e)(2)(A), substituted “section 431” for “the last two sentences of section 412(a)”.

Subsec. (c)(4). Pub. L. 109-280, §114(e)(2)(B), added par. (4).

Subsec. (e)(1). Pub. L. 109-280, §114(e)(3), substituted “section 412(a)(1)(A)” for “section 412(b)(3)(A)”.

Subsec. (e)(2)(A). Pub. L. 109-280, §212(b)(2), as amended by Pub. L. 110-458, §102(b)(3)(A), substituted “If an” for “In the case of a plan other than a multiemployer plan, if the” and “(f), or (g)” for “or (f)”.

Subsec. (f)(1). Pub. L. 109-280, §114(e)(4), substituted “section 430(j)(4)” for “section 412(m)(5)” in introductory provisions and “section 430(j)” for “section 412(m)” in subpar. (B).

Subsecs. (g), (h). Pub. L. 109-280, §212(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Subsec. (f)(4). Pub. L. 104-188 added par. (4).

1994—Subsec. (e)(1), (2)(A). Pub. L. 103-465, §751(a)(9)(B)(i), substituted “(a), (b), or (f)” for “(a) or (b)”.

Subsecs. (f), (g). Pub. L. 103-465, §751(a)(9)(B)(ii), added subsec. (f) and redesignated former subsec. (f) as (g).

1987—Subsec. (a). Pub. L. 100-203, §9305(a)(2)(A), struck out at end “The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).”

Pub. L. 100-203, §9304(c)(1), substituted “10 percent (5 percent in the case of a multiemployer plan)” for “5 percent”.

Subsec. (b). Pub. L. 100-203, §9305(a)(2)(B), struck out at end “The tax imposed by this subsection shall be paid by the employer described in subsection (a).”

Subsecs. (e), (f). Pub. L. 100-203, §9305(a)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (b). Pub. L. 96-596, §2(a)(1)(J), substituted “taxable period” for “correction period”.

Subsec. (c)(1). Pub. L. 96-364, §204(1), substituted “last two sentences” for “last sentence”.

Subsec. (c)(3). Pub. L. 96-596, §2(a)(2)(H), substituted provision defining taxable period as the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section or the date on which the tax imposed by subsec. (a) of this section is assessed for provision defining correction period as the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and by any other period which the Secretary determines reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero.

Subsec. (d). Pub. L. 96-364, §204(2), inserted provisions relating to a multiemployer plan in reorganization.

1976—Subsecs. (c), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(1)–(4) of Pub. L. 109-280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109-280, as added by Pub. L. 110-458, set out as a note under section 401 of this title.

Amendment by section 212(b) of Pub. L. 109-280 applicable with respect to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within such taxable year, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109-280, set out as a note under section 412 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1464(b), Aug. 20, 1996, 110 Stat. 1825, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendment made by clause (ii) of section 751(a)(9)(B) of the Retirement Protection Act of 1994 [Pub. L. 103-465] (108 Stat. 5020).”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1) of Pub. L. 103-465, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9304(c)(2), Dec. 22, 1987, 101 Stat. 1330-348, provided that: “The amendments made by this subsection [amending this section] shall apply to plan years beginning after 1988.”

Amendment by section 9305(a) of Pub. L. 100-203 applicable with respect to plan years beginning after December 31, 1987, see section 9305(d) of Pub. L. 100-203, set out as a note under section 412 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96-364, set out as an Effective Date note under section 194A of this title.

#### EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

#### APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§101-108) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor

plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of this title.

**SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION**

For applicability of amendment by section 212(b) of Pub. L. 109-280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109-280, set out as a note under section 412 of this title.

**EXEMPTION FROM EXCISE TAXES FOR CERTAIN MULTIEMPLOYER PENSION PLANS**

Pub. L. 109-280, title II, §214, Aug. 17, 2006, 120 Stat. 918, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, no tax shall be imposed under subsection (a) or (b) of section 4971 of the Internal Revenue Code of 1986 with respect to any accumulated funding deficiency of a plan described in subsection (b) of this section for any taxable year beginning before the earlier of—

“(1) the taxable year in which the plan sponsor adopts a rehabilitation plan under section 305(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(e)] and section 432(e) of such Code (as added by this Act); or

“(2) the taxable year that contains January 1, 2009.

“(b) PLAN DESCRIBED.—A plan described under this subsection is a multiemployer pension plan—

“(1) with less than 100 participants;

“(2) with respect to which the contributing employers participated in a Federal fishery capacity reduction program;

“(3) with respect to which employers under the plan participated in the Northeast Fisheries Assistance Program; and

“(4) with respect to which the annual normal cost is less than \$100,000 and the plan is experiencing a funding deficiency on the date of enactment of this Act [Aug. 17, 2006].”

**PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998**

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

**§ 4972. Tax on nondeductible contributions to qualified employer plans**

**(a) Tax imposed**

In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

**(b) Employer liable for tax**

The tax imposed by this section shall be paid by the employer making the contributions.

**(c) Nondeductible contributions**

For purposes of this section—

**(1) In general**

The term “nondeductible contributions” means, with respect to any qualified employer plan, the sum of—

(A) the excess (if any) of—

(i) the amount contributed for the taxable year by the employer to or under such plan, over

(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(i) the portion of the amount so determined returned to the employer during the taxable year, and

(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

**(2) Ordering rule for section 404**

For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

(B) then from contributions made during such taxable year.

**(3) Contributions which may be returned to employer**

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

**(4) Special rule for self-employed individuals**

For purposes of paragraph (1), if—

(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404.

**(5) Pre-1987 contributions**

The term “nondeductible contribution” shall not include any contribution made for a taxable year beginning before January 1, 1987.

**(6) Exceptions**

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or

(B) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connec-

tion with a trade or business of the employer.

For purposes of subparagraph (A), the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (A). Subparagraph (B) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).<sup>1</sup>

#### (7) Defined benefit plan exception

In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6)). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

#### (d) Definitions

For purposes of this section—

##### (1) Qualified employer plan

###### (A) In general

The term “qualified employer plan” means—

- (i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),
- (ii) an annuity plan described in section 403(a),
- (iii) any simplified employee pension (within the meaning of section 408(k)), and
- (iv) any simple retirement account (within the meaning of section 408(p)).

###### (B) Exemption for governmental and tax exempt plans

The term “qualified employer plan” does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1).

##### (2) Employer

In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1), the term “employer” means the person treated as the employer under section 401(c)(4).

(Added Pub. L. 99-514, title XI, §1131(c)(1), Oct. 22, 1986, 100 Stat. 2477; amended Pub. L. 100-647, title I, §1011A(e)(1), (2), title II, §2005(a)(1), Nov. 10, 1988, 102 Stat. 3477, 3610; Pub. L. 103-465, title VII, §755(a), Dec. 8, 1994, 108 Stat. 5023; Pub. L. 104-188, title I, §1421(b)(9)(D), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 105-34, title XV, §1507(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 107-16, title VI, §§616(b)(2)(B), 637(a), (b), 652(b), 653(a), June 7, 2001, 115 Stat. 103, 118, 130; Pub. L. 108-311, title

IV, §§404(c), 408(b)(9), Oct. 4, 2004, 118 Stat. 1188, 1193; Pub. L. 109-280, title I, §114(e)(5), title VIII, §803(c), Aug. 17, 2006, 120 Stat. 855, 996.)

#### REFERENCES IN TEXT

Section 447(e), referred to in subsec. (c)(6), was repealed and provisions were redesignated as section 447(e) which do not relate to members of the employer's family by Pub. L. 115-97, title I, §13102(a)(5)(C), Dec. 22, 2017, 131 Stat. 2103.

#### PRIOR PROVISIONS

A prior section, added Pub. L. 93-406, title II, §2001(f)(1), Sept. 2, 1974, 88 Stat. 955; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title III, §312(e)(3), Aug. 13, 1981, 95 Stat. 285; Pub. L. 97-448, title I, §103(c)(10)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, §491(d)(40), July 18, 1984, 98 Stat. 851, related to tax on excess contributions for self-employed individuals, prior to repeal applicable to years beginning after Dec. 31, 1983, by Pub. L. 97-248, title II, §237(c)(1), Sept. 3, 1982, 96 Stat. 511.

#### AMENDMENTS

2006—Subsec. (c)(6)(A). Pub. L. 109-280, §803(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

“(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

“(ii) the amount of contributions described in section 401(m)(4)(A), or”.

Subsec. (c)(7). Pub. L. 109-280, §114(e)(5), substituted “except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))” for “except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)”.

2004—Subsec. (c)(6). Pub. L. 108-311, §408(b)(9), amended directory language of Pub. L. 107-16, §652(b)(3). See 2001 Amendment note below.

Subsec. (c)(6)(A)(ii). Pub. L. 108-311, §404(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “the sum of—

“(I) the amount of contributions described in section 401(m)(4)(A), plus

“(II) the amount of contributions described in section 402(g)(3)(A), or”.

2001—Subsec. (c)(6). Pub. L. 107-16, §652(b)(4), substituted “Subparagraph (B)” for “Subparagraph (C)” in concluding provisions.

Pub. L. 107-16, §652(b)(3), as amended by Pub. L. 108-311, §408(b)(9), substituted “subparagraph (A)” for “subparagraph (B)” in two places in concluding provisions.

Pub. L. 107-16, §652(b)(2), in concluding provisions, struck out first sentence which read as follows: “If 1 or more defined benefit plans were taken into account in determining the amount allowable as a deduction under section 404 for contributions to any defined contribution plan, subparagraph (B) shall apply only if such defined benefit plans are described in section 404(a)(1)(D).”

Pub. L. 107-16, §637(b), in concluding provisions, inserted at end “Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).”

Subsec. (c)(6)(A). Pub. L. 107-16, §652(b)(1), redesignated subpar. (B) as (A) and struck out former subpar.

<sup>1</sup> See References in Text note below.

(A) which read as follows: “contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

“(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

“(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year.”.

Pub. L. 107-16, § 637(a), struck out “and” at end.

Subsec. (c)(6)(B). Pub. L. 107-16, § 652(b)(1), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 107-16, § 637(a), substituted “, or” for period at end.

Subsec. (c)(6)(B)(i). Pub. L. 107-16, § 616(b)(2)(B), substituted “(within the meaning of section 404(a) and as adjusted under section 404(a)(12))” for “(within the meaning of section 404(a))”.

Subsec. (c)(6)(C). Pub. L. 107-16, § 652(b)(1), redesignated subpar. (C) as (B).

Pub. L. 107-16, § 637(a), added subpar. (C).

Subsec. (c)(7). Pub. L. 107-16, § 653(a), added par. (7).

1997—Subsec. (c)(6)(B). Pub. L. 105-34 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), but only to the extent such contributions do not exceed 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans.”

1996—Subsec. (d)(1)(A)(iv). Pub. L. 104-188 added cl. (iv).

1994—Subsec. (c)(6). Pub. L. 103-465 added par. (6).

1988—Subsec. (c). Pub. L. 100-647, § 1011A(e)(1), amended subsec. (c) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) and (2).

Subsec. (c)(4), (5). Pub. L. 100-647, § 2005(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1). Pub. L. 100-647, § 1011A(e)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘qualified employer plan’ means—

“(A) any plan meeting the requirements of section 401(a) which includes a trust exempt from the tax under section 501(a),

“(B) an annuity plan described in section 403(a), and

“(C) any simplified employee pension (within the meaning of section 408(k)).”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(5) of Pub. L. 109-280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109-280, as added by Pub. L. 110-458, set out as a note under section 401 of this title.

Amendment by section 803(c) of Pub. L. 109-280 applicable to contributions for taxable years beginning after Dec. 31, 2005, see section 803(d) of Pub. L. 109-280, set out as a note under section 404 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(c) of Pub. L. 108-311 effective as if included in the provision of Pub. L. 107-16 to which such amendment relates, see section 404(f) of Pub. L. 108-311, set out as a note under section 45A of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 616(b)(2)(B) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 616(c) of Pub. L. 107-16, set out as a note under section 404 of this title.

Pub. L. 107-16, title VI, § 637(d), June 7, 2001, 115 Stat. 118, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.”

Amendment by section 652(b) of Pub. L. 107-16 applicable to plan years beginning after Dec. 31, 2001, see section 652(c) of Pub. L. 107-16, set out as a note under section 404 of this title.

Pub. L. 107-16, title VI, § 653(b), June 7, 2001, 115 Stat. 130, provided that: “The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XV, § 1507(b), Aug. 5, 1997, 111 Stat. 1067, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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 this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, § 755(b), Dec. 8, 1994, 108 Stat. 5024, provided that:

“(1) SECTION 4972(C)(6)(A).—Section 4972(c)(6)(A) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years ending on or after the date of enactment of this Act [Dec. 8, 1994].

“(2) SECTION 4972(C)(6)(B).—Section 4972(c)(6)(B) of such Code (as added by this section) shall apply to taxable years ending on or after December 31, 1992.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(e)(1), (2) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 2005(a)(1) of Pub. L. 100-647 effective as if included in the amendment made by section 1131(c) of Pub. L. 99-514, see section 2005(e) of Pub. L. 100-647, as amended, set out as a note under section 404 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with special rules in case of plans maintained pursuant to collective bargaining agreements, see section 1131(d) of Pub. L. 99-514, as amended, set out as an Effective Date of 1986 Amendment note under section 404 of this title.

#### CONSTRUCTION OF 2001 AMENDMENT

Pub. L. 107-16, title VI, § 637(c), June 7, 2001, 115 Stat. 118, provided that: “Nothing in the amendments made by this section [amending this section] shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.”

#### APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of this title.

#### INCREASE IN AMOUNT FOR PLAN TERMINATION INSURANCE UNDER EMPLOYEE RETIREMENT INSURANCE SECURITY ACT OF 1974

Pub. L. 100-647, title I, § 1011A(e)(5), Nov. 10, 1988, 102 Stat. 3478, provided that: “In the case of any taxable year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of



1974 [29 U.S.C. 1301 et seq.] applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

- “(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed
- “(B) the assets of such plan.”

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

**§ 4973. Tax on excess contributions to certain tax-favored accounts and annuities**

**(a) Tax imposed**

In the case of—

- (1) an individual retirement account (within the meaning of section 408(a)),
- (2) an Archer MSA (within the meaning of section 220(d)),
- (3) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),
- (4) a Coverdell education savings account (as defined in section 530),
- (5) a health savings account (within the meaning of section 223(d)), or
- (6) an ABLE account (within the meaning of section 529A),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

**(b) Excess contributions**

For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term “excess contributions” means the sum of—

- (1) the excess (if any) of—
  - (A) the amount contributed for the taxable year to the accounts or for the annuities (other than a contribution to a Roth IRA or a rollover contribution described in section

402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16)), over

(B) the amount allowable as a deduction under section 219 for such contributions, and

(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts or for the annuities (including the amount contributed to a Roth IRA) for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account or the individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed. For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

**(c) Section 403(b) contracts**

For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term “excess contributions” means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8) or 408(d)(3)(A)(iii)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by—

(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

**(d) Excess contributions to Archer MSAs**

For purposes of this section, in the case of Archer MSAs (within the meaning of section 220(d)), the term “excess contributions” means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than rollover contributions described in section

220(f)(5)) which is neither excludable from gross income under section 106(b) nor allowable as a deduction under section 220 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 220(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 220(b)(1) (determined without regard to section 106(b)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the Archer MSA in a distribution to which section 220(f)(3) or section 138(c)(3) applies shall be treated as an amount not contributed.

**(e) Excess contributions to Coverdell education savings accounts**

For purposes of this section—

**(1) In general**

In the case of Coverdell education savings accounts maintained for the benefit of any one beneficiary, the term “excess contributions” means the sum of—

(A) the amount by which the amount contributed for the taxable year to such accounts exceeds \$2,000 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year); and

(B) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) the distributions out of the accounts for the taxable year (other than rollover distributions); and

(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.

**(2) Special rules**

For purposes of paragraph (1), the following contributions shall not be taken into account:

(A) Any contribution which is distributed out of the Coverdell education savings account in a distribution to which section 530(d)(4)(C) applies.

(B) Any rollover contribution.

**(f) Excess contributions to Roth IRAs**

For purposes of this section, in the case of contributions to a Roth IRA (within the meaning of section 408A(b)), the term “excess contributions” means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to Roth IRAs (other than a qualified rollover contribution described in section 408A(e)), over

(B) the amount allowable as a contribution under sections 408A(c)(2) and (c)(3), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts for the taxable year, and

(B) the excess (if any) of the maximum amount allowable as a contribution under sections 408A(c)(2) and (c)(3) for the taxable year over the amount contributed by the individual to all individual retirement plans for the taxable year.

For purposes of this subsection, any contribution which is distributed from a Roth IRA in a distribution described in section 408(d)(4) shall be treated as an amount not contributed.

**(g) Excess contributions to health savings accounts**

For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term “excess contributions” means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.

**(h) Excess contributions to ABLE account**

For purposes of this section—

**(1) In general**

In the case of an ABLE account (within the meaning of section 529A), the term “excess contributions” means the amount by which the amount contributed for the taxable year to such account (other than contributions under section 529A(c)(1)(C)) exceeds the contribution limit under section 529A(b)(2)(B).

**(2) Special rule**

For purposes of this subsection, any contribution which is distributed out of the ABLE account in a distribution to which the last sentence of section 529A(b)(2) applies shall be treated as an amount not contributed.

(Added Pub. L. 93-406, title II, §2002(d), Sept. 2, 1974, 88 Stat. 966; amended Pub. L. 94-455, title XV, §1501(b)(8), title XIX, §1904(a)(22), Oct. 4, 1976, 90 Stat. 1736, 1814; Pub. L. 95-600, title I, §§156(c)(3), (5), 157(b)(3), (j)(1), title VII, §701(aa)(1), Nov. 6, 1978, 92 Stat. 2803, 2804, 2809, 2921; Pub. L. 96-222, title I, §101(a)(13)(C), (14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97-34, title III,

§§ 311(h)(7), (9), (10), 313(b)(2), Aug. 13, 1981, 95 Stat. 282, 286; Pub. L. 98-369, div. A, title IV, § 491(d)(41)–(44), (55), July 18, 1984, 98 Stat. 851, 852; Pub. L. 99-514, title XI, § 1102(b)(1), title XVIII, § 1848(f), Oct. 22, 1986, 100 Stat. 2415, 2858; Pub. L. 100-647, title I, § 1011(b)(3), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 102-318, title V, § 521(b)(41), July 3, 1992, 106 Stat. 313; Pub. L. 104-188, title I, § 1704(t)(70), (72), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 104-191, title III, § 301(e), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105-33, title IV, § 4006(b)(1), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105-34, title II, § 213(d), title III, § 302(b), Aug. 5, 1997, 111 Stat. 817, 828; Pub. L. 105-206, title VI, §§ 6004(d)(10), 6005(b)(8), 6023(18)(A), July 22, 1998, 112 Stat. 795, 799, 825; Pub. L. 106-554, § 1(a)(7) [title II, § 202(a)(6), (b)(2)(C), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 107-16, title IV, §§ 401(a)(2), (g)(2)(D), 402(a)(4)(A), title VI, § 641(e)(11), June 7, 2001, 115 Stat. 57, 60, 121; Pub. L. 107-22, § 1(b)(1)(C), (2)(B), (4), July 26, 2001, 115 Stat. 197; Pub. L. 108-173, title XII, § 1201(e), Dec. 8, 2003, 117 Stat. 2478; Pub. L. 108-311, title IV, § 408(a)(22), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 113-295, div. B, title I, § 102(b), Dec. 19, 2014, 128 Stat. 4061.)

## AMENDMENTS

2014—Subsec. (a)(6). Pub. L. 113-295, § 102(b)(1), added par. (6).

Subsec. (h). Pub. L. 113-295, § 102(b)(2), added subsec. (h).

2004—Subsec. (c). Pub. L. 108-311 substituted “subsection (a)(3)” for “subsection (a)(2)” in introductory provisions.

2003—Subsec. (a)(5). Pub. L. 108-173, § 1201(e)(1), added par. (5).

Subsec. (g). Pub. L. 108-173, § 1201(e)(2), added subsec. (g).

2001—Subsec. (a)(4). Pub. L. 107-22, § 1(b)(1)(C), substituted “a Coverdell education savings” for “an education individual retirement”.

Subsec. (b)(1)(A). Pub. L. 107-16, § 641(e)(11), substituted “408(d)(3), or 457(e)(16)” for “or 408(d)(3)”.

Subsec. (e). Pub. L. 107-22, § 1(b)(4), substituted “Coverdell education savings” for “education individual retirement” in heading.

Pub. L. 107-16, § 402(a)(4)(A), which directed the substitution of “qualified tuition” for “qualified State tuition” wherever appearing in subsec. (e), could not be executed because the term “qualified State tuition” did not appear subsequent to amendment by section 401(g)(2)(D) of Pub. L. 107-16, which struck out par. (1)(B). See below.

Subsec. (e)(1). Pub. L. 107-22, § 1(b)(2)(B), substituted “Coverdell education savings” for “education individual retirement” in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 107-16, § 401(a)(2), (g)(2)(D), substituted “\$2,000” for “\$500” and inserted “and” at end.

Subsec. (e)(1)(B), (C). Pub. L. 107-16, § 401(g)(2)(D), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year; and”.

Subsec. (e)(2)(A). Pub. L. 107-22, § 1(b)(2)(B), substituted “Coverdell education savings” for “education individual retirement”.

2000—Subsec. (a)(2). Pub. L. 106-554, § 1(a)(7) [title II, § 202(b)(10)], substituted “an Archer” for “a Archer”.

Pub. L. 106-554, § 1(a)(7) [title II, § 202(a)(6)], substituted “Archer MSA” for “medical savings account”.

Subsec. (d). Pub. L. 106-554, § 1(a)(7) [title II, § 202(a)(6), (b)(2)(C), (6)], substituted “Archer MSAs” for

“medical savings accounts” in heading, “Archer MSAs” for “medical savings accounts” in introductory provisions, and “Archer MSA” for “medical savings account” in concluding provisions.

1998—Pub. L. 105-206, § 6023(18)(A), amended section catchline generally. Prior to amendment, catchline read as follows: “Tax on excess contributions to individual retirement accounts, medical savings accounts, certain section 403(b) contracts, and certain individual retirement annuities”.

Subsec. (b)(1)(A). Pub. L. 105-206, § 6005(b)(8)(B)(i), inserted “a contribution to a Roth IRA or” after “other than”.

Subsec. (b)(2)(C). Pub. L. 105-206, § 6005(b)(8)(B)(ii), inserted “(including the amount contributed to a Roth IRA)” after “annuities”.

Subsec. (e)(1). Pub. L. 105-206, § 6004(d)(10)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: “In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term ‘excess contributions’ means—

“(A) the amount by which the amount contributed for the taxable year to such accounts exceeds \$500, and

“(B) any amount contributed to such accounts for any taxable year if any amount is contributed during such year to a qualified State tuition program for the benefit of such beneficiary.”

Subsec. (e)(2)(B), (C). Pub. L. 105-206, § 6004(d)(10)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “Any contribution described in section 530(b)(2)(B) to a qualified State tuition program.”

Subsec. (f). Pub. L. 105-206, § 6005(b)(8)(C), made technical amendment to directory language of Pub. L. 105-34, § 302(b). See 1997 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 105-206, § 6005(b)(8)(A)(i), substituted “Roth IRAs” for “such accounts”.

Subsec. (f)(2)(B). Pub. L. 105-206, § 6005(b)(8)(A)(ii), substituted “by the individual to all individual retirement plans” for “to the accounts”.

1997—Subsec. (a)(4). Pub. L. 105-34, § 213(d)(1), added par. (4).

Subsec. (d). Pub. L. 105-33 inserted “or section 138(c)(3)” after “section 220(f)(3)” in concluding provisions.

Subsec. (e). Pub. L. 105-34, § 213(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 105-34, § 302(b), as amended by Pub. L. 105-206, § 6005(b)(8)(C), added subsec. (f).

1996—Pub. L. 104-191, § 301(e)(1), inserted “medical savings accounts,” after “accounts,” in section catchline.

Subsec. (a). Pub. L. 104-191, § 301(e)(1)–(3), struck out “or” at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Subsec. (b)(1)(A). Pub. L. 104-188, § 1704(t)(72), provided that section 521(b)(41) of Pub. L. 102-318 shall be applied as if “section” appeared instead of “sections” in the material proposed to be stricken. See 1992 Amendment note below.

Pub. L. 104-188, § 1704(t)(70), substituted “section” for “sections”.

Subsec. (d). Pub. L. 104-191, § 301(e)(4), added subsec. (d).

1992—Subsec. (b)(1)(A). Pub. L. 102-318, which directed the substitution of “sections 402(c)” for “sections 402(a)(5), 402(a)(7)”, was executed by substituting “sections 402(c)” for “section 402(a)(5), 402(a)(7)”. See 1996 Amendment note above.

1988—Subsec. (b). Pub. L. 100-647 substituted “shall be computed without regard to section 219(g)” for “(after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)” in last sentence.

1986—Subsec. (b). Pub. L. 99-514, § 1102(b)(1), inserted at end “For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be in-

creased by the nondeductible limit under section 408(o)(2)(B)."

Pub. L. 99-514, §1848(f), in introductory provisions, substituted "or individual retirement annuities" for "individual retirement annuities, or bonds", in par. (1)(A), substituted "(other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3)), over" for "or bonds (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3)), over", and in par. (2)(A), struck out "or bonds" after "for the annuities".

1984—Pub. L. 98-369, §491(d)(55), substituted "and certain individual retirement annuities" for "certain individual retirement annuities, and certain retirement bonds" in section catchline.

Subsec. (a). Pub. L. 98-369, §491(d)(41), inserted "or" at end of par. (1), struck out "or" at end of par. (2), struck out par. (3) which imposed a tax in the case of a retirement bond, within the meaning of section 409, established for the benefit of any individual, and in the concluding provision substituted "or annuity" for "annuity, or bond" and "or annuities" for "annuities, or bonds".

Subsec. (b). Pub. L. 98-369, §491(d)(43), substituted in provision following par. (2)(C) "or the individual retirement annuity" for "individual retirement annuity, or bond".

Subsec. (b)(1)(A). Pub. L. 98-369, §491(d)(42), which directed the amendment of subpar. (A) by substituting "and 408(d)(3)" for "408(d)(3), and 409(b)(3)(C)" was executed, as the probable intent of Congress, by substituting "or 408(d)(3)" for "408(d)(3), or 409(b)(3)(C)".

Subsec. (c)(1). Pub. L. 98-369, §491(d)(44), substituted "or 408(d)(3)(A)(iii)" for "408(d)(3)(A)(iii), or 409(b)(3)(C)".

1981—Subsec. (a). Pub. L. 97-34, §311(h)(9), substituted "The tax imposed by this subsection shall be paid by such individual" for "The tax imposed by this subsection shall be paid by the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate".

Subsec. (b)(1)(A). Pub. L. 97-34, §313(b)(2), inserted "405(d)(3)," after "403(b)(8),".

Subsec. (b)(1)(B). Pub. L. 97-34, §311(h)(7), substituted "section 219" for "section 219 or 220".

Subsec. (b)(2)(C). Pub. L. 97-34, §311(h)(7), (10), substituted "section 219" for "section 219 or 220", and "section 219(f)(6)" for "sections 219(c)(5) and 220(c)(6)".

1980—Subsec. (b)(1)(A). Pub. L. 96-222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (c)(1). Pub. L. 96-222, §101(a)(13)(C), substituted "409(b)(3)(C)" for "409(d)(3)(C)".

1978—Subsec. (b)(1)(A). Pub. L. 95-600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95-600, §157(b)(3), substituted "reduced by the sum of—" for "reduced by the excess (if any) of", struck out "the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable years and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408(d)(1)" in provision preceding par. (A), and added subpars. (A), (B), and (C).

Subsec. (b). Pub. L. 95-600, §§157(j)(1), 701(aa)(1), struck out in last sentence "if such distribution consists of an excess contribution solely because of employer contributions to a plan or contract described in section 219(b)(2) or by reason of the application of section 219(b)(1) (without regard to the \$1,500 limitation) or section 220(b)(1) (without regard to the \$1,750 limitation) and only if such distribution does not exceed the excess of \$1,500 or \$1,750 if applicable, over the amount described in paragraph (1)(B)" after "as an amount not contributed".

Subsec. (c)(1). Pub. L. 95-600, §156(c)(5), inserted "(other than a rollover contribution described in sec-

tion 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C))" after "account".

1976—Subsec. (a)(3). Pub. L. 94-455, §§1501(b)(8)(A), 1904(a)(22)(A), substituted "the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate" for "such individual", effective for taxable years beginning after December 31, 1976 and substituted "such individual" for "the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate", effective for the first day of the first month which begins more than 90 days after Oct. 4, 1976.

Subsec. (b)(1)(B). Pub. L. 94-455, §1501(b)(8)(B), inserted "or 220" after "under section 219".

Subsec. (b)(2). Pub. L. 94-455, §1501(b)(8)(C), inserted "or 220" after "under section 219" and "the taxable year and" before "all prior taxable years" and struck out provisions relating to the treatment of contributions out of individual retirement accounts, annuities or bonds to which section 408(d)(4) applied.

Subsec. (c). Pub. L. 94-455, §1904(a)(22)(B), substituted "subsection (a)(2)" for "subsection (a)(3)" in provisions preceding par. (1).

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113-295, set out as a note under section 552a of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2003 AMENDMENT

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

#### EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107-22 effective July 26, 2001, see section 1(c) of Pub. L. 107-22, set out as a note under section 26 of this title.

Amendment by section 401(a)(2), (g)(2)(D) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107-16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107-16, set out as a note under section 72 of this title.

Amendment by section 641(e)(11) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(18)(A) of Pub. L. 105-206 effective July 22, 1998, see section 6023(32) of Pub. L. 105-206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(10) and 6005(b)(8) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 213(d) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105-34, set out as a note under section 26 of this title.

Amendment by section 302(b) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105-34, set out as a note under section 219 of this title.

Amendment by Pub. L. 105-33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of

Pub. L. 105-33, set out as an Effective Date note under section 138 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(b)(1) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Amendment by section 1848(f) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(7), (9), (10) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

Amendment by section 313(b)(2) of Pub. L. 97-34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 22 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 156(c)(3), (5) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as a note under section 403 of this title.

Amendment by section 157(b)(3) of Pub. L. 95-600 applicable to determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95-600, set out as a note under section 219 of this title.

Pub. L. 95-600, title I, §157(j)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contributions made for taxable years beginning after December 31, 1977."

Pub. L. 95-600, title VII, §701(aa)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in section 1501 of the Tax Reform Act of 1976 [section 1501 of Pub. L. 94-455] at the time of the enactment of such Act [Oct. 4, 1976]."

Pub. L. 95-600, title VII, §703(j)(13), Nov. 6, 1978, 92 Stat. 2942, provided that: "Notwithstanding section 1904(d) of the Tax Reform Act of 1976 [Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title], the amendment made by section 1904(a)(22)(A) of such Act [amending this section] shall take effect on the date of the enactment of such Act [Oct. 4, 1976]."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(8) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as a note under section 62 of this title.

Amendment by section 1904(a)(22) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94-455, set out as a note under section 4041 of this title.

#### EFFECTIVE DATE

Pub. L. 93-406, title II, §2002(i)(2), Sept. 2, 1974, 88 Stat. 971, provided that: "The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) [enacting this section and sections 4974 and 6693 of this title and amending sections 37, 46, 50, 56, 72, 801, 805, 901, 3401, and 6047 of this title] shall take effect on January 1, 1975."

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 4974. Excise tax on certain accumulations in qualified retirement plans

#### (a) General rule

If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

#### (b) Minimum required distribution

For purposes of this section, the term "minimum required distribution" means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, as determined under regulations prescribed by the Secretary.

#### (c) Qualified retirement plan

For purposes of this section, the term "qualified retirement plan" means—

- (1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),
- (2) an annuity plan described in section 403(a),
- (3) an annuity contract described in section 403(b),
- (4) an individual retirement account described in section 408(a), or
- (5) an individual retirement annuity described in section 408(b).

Such term includes any plan, contract, account, or annuity which, at any time, has been determined by the Secretary to be such a plan, contract, account, or annuity.

**(d) Waiver of tax in certain cases**

If the taxpayer establishes to the satisfaction of the Secretary that—

- (1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and
- (2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.

(Added Pub. L. 93-406, title II, §2002(e), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title I, §157(i)(1), Nov. 6, 1978, 92 Stat. 2808; Pub. L. 99-514, title XI, §1121(a)(1), title XVIII, §1852(a)(7)(B), (C), Oct. 22, 1986, 100 Stat. 2464, 2866.)

**AMENDMENTS**

1986—Pub. L. 99-514, §1121(a)(1), amended section generally, substituting provisions imposing an excise tax on certain accumulations in qualified retirement plans for provisions imposing an excise tax on certain accumulations in individual retirement accounts and annuities.

Subsec. (a). Pub. L. 99-514, §1852(a)(7)(B), substituted “section 408(a)(6) or 408(b)(3)” for “section 408(a)(6) or (7), or 408(b)(3) or (4)”.

Subsec. (b). Pub. L. 99-514, §1852(a)(7)(C), substituted “section 408(a)(6) or 408(b)(3)” for “section 408(a)(6) or (7) or 408(b)(3) or (4)”.

1978—Subsec. (c). Pub. L. 95-600 added subsec. (c).

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by section 1121(a)(1) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1988, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(7)(B), (C) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

**EFFECTIVE DATE OF 1978 AMENDMENT**

Pub. L. 95-600, title I, §157(i)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1975.”

**EFFECTIVE DATE**

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

**PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [ §§1101-1147 and 1171-1177] or title XVIII [ §§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**§ 4975. Tax on prohibited transactions**

**(a) Initial taxes on disqualified person**

There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

**(b) Additional taxes on disqualified person**

In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

**(c) Prohibited transaction**

**(1) General rule**

For purposes of this section, the term “prohibited transaction” means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

**(2) Special exemption**

The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after con-

sultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

- (A) administratively feasible,
- (B) in the interests of the plan and of its participants and beneficiaries, and
- (C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

**(3) Special rule for individual retirement accounts**

An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

**(4) Special rule for Archer MSAs**

An individual for whose benefit an Archer MSA (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 220(e)(2) applies to such transaction.

**(5) Special rule for Coverdell education savings accounts**

An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.

**(6) Special rule for health savings accounts**

An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings ac-

count by reason of the application of section 223(e)(2) to such account.

**(d) Exemptions**

Except as provided in subsection (f)(6), the prohibitions provided in subsection (c) shall not apply to—

- (1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

- (A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

- (B) is not made available to highly compensated employees (within the meaning of section 414(q)) in an amount greater than the amount made available to other employees,

- (C) is made in accordance with specific provisions regarding such loans set forth in the plan,

- (D) bears a reasonable rate of interest, and

- (E) is adequately secured;

- (2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

- (3) any loan to an<sup>1</sup> leveraged employee stock ownership plan (as defined in subsection (e)(7)), if—

- (A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

- (B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

- (4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

- (A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

- (B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

- (5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

- (A) the employer maintaining the plan, or

- (B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written

<sup>1</sup> So in original. Probably should be "a".

by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than a reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan

as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction) or which is exempt from section 406 of such Act by reason of section 408(b)(12) of such Act;

(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F);

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F);

(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) such stock is in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))),<sup>2</sup>

(B) such stock is held by such trust as of the date of the enactment of this paragraph,

(C) such sale is pursuant to an election under section 1362(a) by such bank or company,

(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

<sup>2</sup>So in original. Another closing parenthesis probably should precede the comma.



(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made;

(17) Any<sup>3</sup> transaction in connection with the provision of investment advice described in subsection (e)(3)(B) to a participant or beneficiary in a plan that permits such participant or beneficiary to direct the investment of plan assets in an individual account, if—

(A) the transaction is—

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (f)(8) are met,<sup>4</sup>

(18) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person (other than a fiduciary described in subsection (e)(3)) with respect to a plan if—

(A) the transaction involves a block trade,

(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length<sup>5</sup> transaction, and

(D) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length<sup>5</sup> transaction with an unrelated party,<sup>4</sup>

(19) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person if—

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary of Labor may determine by regulation,

(B) either—

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length<sup>5</sup> transaction with an unrelated party,

(D) if<sup>6</sup> the disqualified person has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph, and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue,<sup>4</sup>

(20) transactions described in subparagraphs (A), (B), and (D) of subsection (c)(1) between a plan and a person that is a disqualified person other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of subsection (e)(3)(B)) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in subparagraph (F), (G), (H), or (I) of subsection (e)(2), or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration,<sup>4</sup>

(21) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan (as defined in this section) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other disqualified person person,<sup>7</sup> if—

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length<sup>5</sup> foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in com-

<sup>3</sup> So in original. Probably should not be capitalized.

<sup>4</sup> So in original. The comma probably should be a semicolon.

<sup>5</sup> So in original. Probably should be "arm's-length".

<sup>6</sup> So in original. The word "if" probably should not appear.

<sup>7</sup> So in original.

parable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the inter-bank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction,<sup>4</sup>

(22) any transaction described in subsection (c)(1)(A) involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if—

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of section 270.17a-7(b) of title 17, Code of Federal Regulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is disclosed pursuant to subparagraph (D)), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H),

(E) each plan participating in the transaction has assets of at least \$100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7) of the Employee Retirement Income Security Act of 1974), the master trust has assets of at least \$100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the parties involved in the cross-trade;

and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H), and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of non-compliance.

The written report shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time,<sup>4</sup> or

(23) except as provided in subsection (f)(11), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

#### **(e) Definitions**

##### **(1) Plan**

For purposes of this section, the term "plan" means—

(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a),

(B) an individual retirement account described in section 408(a),

(C) an individual retirement annuity described in section 408(b),

(D) an Archer MSA described in section 220(d),

(E) a health savings account described in section 223(d),

(F) a Coverdell education savings account described in section 530, or

(G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

##### **(2) Disqualified person**

For purposes of this section, the term "disqualified person" means a person who is—

- (A) a fiduciary;
- (B) a person providing services to the plan;
- (C) an employer any of whose employees are covered by the plan;
- (D) an employee organization any of whose members are covered by the plan;
- (E) an owner, direct or indirect, of 50 percent or more of—

- (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

- (ii) the capital interest or the profits interest of a partnership, or

- (iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

- (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

- (ii) the capital interest or profits interest of such partnership, or

- (iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

### (3) Fiduciary

For purposes of this section, the term “fiduciary” means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

### (4) Stockholdings

For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

### (5) Partnerships; trusts

For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

### (6) Member of family

For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

### (7) Employee stock ownership plan

The term “employee stock ownership plan” means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(o), and, if applicable, section 409(n), section 409(p), and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

### (8) Qualifying employer security

The term “qualifying employer security” means any employer security within the meaning of section 409(l). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company’s investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

### (9) Section made applicable to withdrawal liability payment funds

For purposes of this section—

#### (A) In general

The term “plan” includes a trust described in section 501(c)(22).

**(B) Disqualified person**

In the case of any trust to which this section applies by reason of subparagraph (A), the term “disqualified person” includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.

**(f) Other definitions and special rules**

For purposes of this section—

**(1) Joint and several liability**

If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

**(2) Taxable period**

The term “taxable period” means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

- (A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212,
- (B) the date on which the tax imposed by subsection (a) is assessed, or
- (C) the date on which correction of the prohibited transaction is completed.

**(3) Sale or exchange; encumbered property**

A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

**(4) Amount involved**

The term “amount involved” means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

- (A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and
- (B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the taxable period.

**(5) Correction**

The terms “correction” and “correct” mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

**(6) Exemptions not to apply to certain transactions****(A) In general**

In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)), the exemptions provided by subsection (d) (other than paragraphs (9) and (12)) shall not apply to a transaction in which the plan directly or indirectly—

- (i) lends any part of the corpus or income of the plan to,
- (ii) pays any compensation for personal services rendered to the plan to, or
- (iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

**(B) Special rules for shareholder-employees, etc.****(i) In general**

For purposes of subparagraph (A), the following shall be treated as owner-employees:

- (I) A shareholder-employee.
- (II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37)).
- (III) An employer or association of employees which establishes such an individual retirement plan under section 408(c).

**(ii) Exception for certain transactions involving shareholder-employees**

Subparagraph (A)(iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e)(7)) by a shareholder-employee, a member of the family (as defined in section 267(c)(4)) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A).

**(iii) Loan exception**

For purposes of subparagraph (A)(i), the term “owner-employee” shall only include a person described in subclause (II) or (III) of clause (i).

**(C) Shareholder-employee**

For purposes of subparagraph (B), the term “shareholder-employee” means an employee or officer of an S corporation who owns (or is considered as owning within the meaning of section 318(a)(1)) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

**(7) S corporation repayment of loans for qualifying employer securities**

A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.

**(8) Provision of investment advice to participant and beneficiaries**

**(A) In general**

The prohibitions provided in subsection (c) shall not apply to transactions described in subsection (d)(17) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

**(B) Eligible investment advice arrangement**

For purposes of this paragraph, the term “eligible investment advice arrangement” means an arrangement—

(i) which either—

(I) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(II) uses a computer model under an investment advice program meeting the requirements of subparagraph (C) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(ii) with respect to which the requirements of subparagraphs (D), (E), (F), (G), (H), and (I) are met.

**(C) Investment advice program using computer model**

**(i) In general**

An investment advice program meets the requirements of this subparagraph if the requirements of clauses (ii), (iii), and (iv) are met.

**(ii) Computer model**

The requirements of this clause are met if the investment advice provided under

the investment advice program is provided pursuant to a computer model that—

(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(IV) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(V) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

**(iii) Certification**

**(I) In general**

The requirements of this clause are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary of Labor, that the computer model meets the requirements of clause (ii).

**(II) Renewal of certifications**

If, as determined under regulations prescribed by the Secretary of Labor, there are material modifications to a computer model, the requirements of this clause are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

**(III) Eligible investment expert**

The term “eligible investment expert” means any person which meets such requirements as the Secretary of Labor may provide and which does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

**(iv) Exclusivity of recommendation**

The requirements of this clause are met with respect to any investment advice program if—

(I) the only investment advice provided under the program is the advice generated by the computer model described in clause (ii), and

(II) any transaction described in (d)(17)(A)(ii)<sup>8</sup> occurs solely at the direction of the participant or beneficiary.

<sup>8</sup> So in original. Probably should be “subsection (d)(17)(A)(ii)”.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in clause (i), but only if such request has not been solicited by any person connected with carrying out the arrangement.

**(D) Express authorization by separate fiduciary**

The requirements of this subparagraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

**(E) Audits**

**(i) In general**

The requirements of this subparagraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—

(I) conducts an annual audit of the arrangement for compliance with the requirements of this paragraph, and

(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this paragraph.

**(ii) Special rule for individual retirement and similar plans**

In the case of a plan described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of subsection (e)(1), in lieu of the requirements of clause (i), audits of the arrangement shall be conducted at such times and in such manner as the Secretary of Labor may prescribe.

**(iii) Independent auditor**

For purposes of this subparagraph, an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

**(F) Disclosure**

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)—

(I) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser,<sup>9</sup> in the development of the investment ad-

vice program and in the selection of investment options available under the plan,

(II) of the past performance and historical rates of return of the investment options available under the plan,

(III) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(IV) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(V) the<sup>10</sup> manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(VI) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(VII) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(VIII) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(ii) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser—

(I) maintains the information described in clause (i) in accurate form and in the manner described in subparagraph (H),

(II) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(III) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(IV) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

**(G) Other conditions**

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(iii) the compensation received by the fiduciary adviser and affiliates thereof in

<sup>9</sup> So in original. The comma probably should not appear.

<sup>10</sup> So in original. Probably should be "of the".

connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length<sup>5</sup> transaction would be.

**(H) Standards for presentation of information**

**(i) In general**

The requirements of this subparagraph are met if the notification required to be provided to participants and beneficiaries under subparagraph (F)(i) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

**(ii) Model form for disclosure of fees and other compensation**

The Secretary of Labor shall issue a model form for the disclosure of fees and other compensation required in subparagraph (F)(i)(III) which meets the requirements of clause (i).

**(I) Maintenance for 6 years of evidence of compliance**

The requirements of this subparagraph are met if a fiduciary adviser who has provided advice referred to in subparagraph (A) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

**(J) Definitions**

For purposes of this paragraph and subsection (d)(17)—

**(i) Fiduciary adviser**

The term “fiduciary adviser” means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) by the person to a participant or beneficiary of the plan and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust de-

partment of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV), or

(VI) an employee, agent, or registered representative of a person described in subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this title, a person who develops the computer model described in subparagraph (C)(ii) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this paragraph and subsection (d)(17), except that the Secretary of Labor may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

**(ii) Affiliate**

The term “affiliate” of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3))).

**(iii) Registered representative**

The term “registered representative” of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

**(9) Block trade**

The term “block trade” means any trade of at least 10,000 shares or with a market value of at least \$200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

**(10) Adequate consideration**

The term “adequate consideration” means—  
(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(ii) if the security is not traded on such a national securities exchange, a price not

less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

#### **(11) Correction period**

##### **(A) In general**

For purposes of subsection (d)(23), the term “correction period” means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(23)) constitute a prohibited transaction.

##### **(B) Exceptions**

##### **(i) Employer securities**

Subsection (d)(23) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

##### **(ii) Knowing prohibited transaction**

In the case of any disqualified person, subsection (d)(23) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a prohibited transaction.

##### **(C) Abatement of tax where there is a correction**

If a transaction is not treated as a prohibited transaction by reason of subsection (d)(23), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

##### **(D) Definitions**

For purposes of this paragraph and subsection (d)(23)—

##### **(i) Security**

The term “security” has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

##### **(ii) Commodity**

The term “commodity” has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

##### **(iii) Correct**

The term “correct” means, with respect to a transaction—

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

##### **(g) Application of section**

This section shall not apply—

(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

(2) to a governmental plan (within the meaning of section 414(d)); or

(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

##### **(h) Notification of Secretary of Labor**

Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

##### **(i) Cross reference**

**For provisions concerning coordination procedures between Secretary of Labor and Secretary of the Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.**

(Added Pub. L. 93-406, title II, §2003(a), Sept. 2, 1974, 88 Stat. 971; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title I, §141(f)(5), (6), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96-222, title I, §101(a)(7)(C), (K), (L)(iv)(III), (v)(XI), Apr. 1, 1980, 94 Stat. 198-201; Pub. L. 96-364, title II, §§208(b), 209(b), Sept. 26, 1980, 94 Stat. 1289, 1290; Pub. L. 96-596, §2(a)(1)(K), (L), (2)(I), (3)(F), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 97-448, title III, §305(d)(5), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98-369, div. A, title IV, §491(d)(45), (46), (e)(7), (8), July 18, 1984, 98 Stat. 851-853; Pub. L. 99-514, title XI, §1114(b)(15)(A), title XVIII, §§1854(f)(3)(A), 1899A(51), Oct. 22, 1986, 100 Stat. 2452, 2882, 2961; Pub. L. 101-508, title XI, §11701(m), Nov. 5, 1990, 104 Stat. 1388-513; Pub. L. 104-188, title I, §§1453(a), 1702(g)(3), Aug. 20, 1996, 110 Stat. 1817, 1873; Pub. L. 104-191, title III, §301(f), Aug. 21,



1996, 110 Stat. 2051; Pub. L. 105-34, title II, §213(b), title X, §1074(a), title XV, §§1506(b)(1), 1530(c)(10), title XVI, §1602(a)(5), Aug. 5, 1997, 111 Stat. 816, 949, 1065, 1079, 1094; Pub. L. 105-206, title VI, §6023(19), July 22, 1998, 112 Stat. 825; Pub. L. 106-554, §1(a)(7) [title II, §202(a)(7), (b)(7), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628, 2763A-629; Pub. L. 107-16, title VI, §§612(a), 656(b), June 7, 2001, 115 Stat. 100, 134; Pub. L. 107-22, §1(b)(1)(D), (3)(D), July 26, 2001, 115 Stat. 197; Pub. L. 108-173, title XII, §1201(f), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108-357, title II, §§233(c), 240(a), Oct. 22, 2004, 118 Stat. 1434, 1437; Pub. L. 109-135, title IV, §413(a)(2), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 109-280, title VI, §§601(b)(1), (2), 611(a)(2), (c)(2), (d)(2), (e)(2), (g)(2), 612(b), Aug. 17, 2006, 120 Stat. 958, 959, 967, 969-971, 974, 976; Pub. L. 110-458, title I, §106(a)(2), (b)(2), (c), Dec. 23, 2008, 122 Stat. 5106.)

## REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Part 1 of subtitle E of title IV of such Act is classified generally to part 1 (29 U.S.C. 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Sections 401, 405 to 408, 3003, 4044, 4223, and 4231 of such Act are classified to sections 1101, 1105 to 1108, 1203, 1344, 1403, and 1411, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (d)(16)(B), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

The Investment Company Act of 1940, referred to in subsecs. (e)(8) and (g), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (f)(8)(J)(i)(I), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (f)(8)(J)(i)(IV), (10)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 6 of the Act is classified to section 78f of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

## AMENDMENTS

2008—Subsec. (d)(17). Pub. L. 110-458, §106(a)(2)(A), substituted “that permits” for “and that permits” in introductory provisions.

Subsec. (d)(18). Pub. L. 110-458, §106(b)(2)(A), in introductory provisions, substituted “disqualified person” for “party in interest” and “subsection (e)(3)” for “subsection (e)(3)(B)”.

Subsec. (d)(19) to (21). Pub. L. 110-458, §106(b)(2)(B), substituted “disqualified person” for “party in interest” wherever appearing.

Subsec. (d)(21)(C). Pub. L. 110-458, §106(b)(2)(C), struck out “or less” before “than 3 percent”.

Subsec. (f)(8)(A). Pub. L. 110-458, §106(a)(2)(B)(i), substituted “subsection (d)(17)” for “subsection (b)(14)”.

Subsec. (f)(8)(C)(iv)(II). Pub. L. 110-458, §106(a)(2)(B)(ii), substituted “(d)(17)(A)(ii)” for “subsection (b)(14)(B)(ii)”.

Subsec. (f)(8)(F)(i)(I). Pub. L. 110-458, §106(a)(2)(B)(iii), substituted “fiduciary adviser,” for “financial adviser”.

Subsec. (f)(8)(I). Pub. L. 110-458, §106(a)(2)(B)(iv), substituted “subsection (c)” for “section 406”.

Subsec. (f)(8)(J)(i). Pub. L. 110-458, §106(a)(2)(B)(v), substituted “a participant” for “the participant” in introductory provisions and concluding provisions, inserted “referred to in subsection (e)(3)(B)” after “investment advice” in introductory provisions, and substituted “subsection (d)(4)” for “section 408(b)(4)” in subcl. (II).

Subsec. (f)(11)(B)(i). Pub. L. 110-458, §106(c), inserted “of the Employee Retirement Income Security Act of 1974” after “section 407(d)(1)” and “of such Act” after “section 407(d)(2)”.

2006—Subsec. (d)(17). Pub. L. 109-280, §601(b)(1), added par. (17).

Subsec. (d)(18). Pub. L. 109-280, §611(a)(2)(A), added par. (18).

Subsec. (d)(19). Pub. L. 109-280, §611(c)(2), added par. (19).

Subsec. (d)(20). Pub. L. 109-280, §611(d)(2)(A), added par. (20).

Subsec. (d)(21). Pub. L. 109-280, §611(e)(2), added par. (21).

Subsec. (d)(22). Pub. L. 109-280, §611(g)(2), added par. (22).

Subsec. (d)(23). Pub. L. 109-280, §612(b)(1), added par. (23).

Subsec. (f)(8). Pub. L. 109-280, §601(b)(2), added par. (8).

Subsec. (f)(9). Pub. L. 109-280, §611(a)(2)(B), added par. (9).

Subsec. (f)(10). Pub. L. 109-280, §611(d)(2)(B), added par. (10).

Subsec. (f)(11). Pub. L. 109-280, §612(b)(2), added par. (11).

2005—Subsec. (d)(16)(A). Pub. L. 109-135, §413(a)(2)(A), inserted “or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)))” after “a bank (as defined in section 581)”.

Subsec. (d)(16)(C). Pub. L. 109-135, §413(a)(2)(B), inserted “or company” after “such bank”.

2004—Subsec. (d)(16). Pub. L. 108-357, §233(c), added par. (16).

Subsec. (f)(7). Pub. L. 108-357, §240(a), added par. (7).

2003—Subsec. (c)(6). Pub. L. 108-173, §1201(f)(1), added par. (6).

Subsec. (e)(1)(E) to (G). Pub. L. 108-173, §1201(f)(2), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

2001—Subsec. (c)(5). Pub. L. 107-22, §1(b)(1)(D), (3)(D), in heading, substituted “Coverdell education savings” for “education individual retirement” and in text, substituted “a Coverdell education savings” for “an education individual retirement”.

Subsec. (e)(1)(E). Pub. L. 107-22, §1(b)(1)(D), substituted “a Coverdell education savings” for “an education individual retirement”.

Subsec. (e)(7). Pub. L. 107-16, §656(b), inserted “, section 409(p),” after “409(n)” in concluding provisions.

Subsec. (f)(6)(B)(iii). Pub. L. 107-16, §612(a), added cl. (iii).

2000—Subsec. (c)(4). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer” for “a Archer”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(7), (b)(7)], substituted “Archer MSAs” for “medical savings accounts” in heading and “Archer MSA” for “medical savings account” in text.

Subsec. (e)(1)(D). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(10)], substituted “an Archer” for “a Archer”.

Pub. L. 106-554, §1(a)(7) [title II, §202(a)(7)], substituted “Archer MSA” for “medical savings account”.

1998—Subsec. (c)(3). Pub. L. 105-206, §6023(19)(A), substituted “exempt from the tax” for “exempt for the tax”.

Subsec. (i). Pub. L. 105-206, §6023(19)(B), substituted “Secretary of the Treasury” for “Secretary of Treasury”.

1997—Subsec. (a). Pub. L. 105-34, §1074(a), substituted “15 percent” for “10 percent”.

Subsec. (c)(4). Pub. L. 105-34, §1602(a)(5), substituted “if section 220(e)(2) applies to such transaction.” for “if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 220(e)(2) to such account.”

Subsec. (c)(5). Pub. L. 105-34, §213(b)(2), added par. (5).

Subsec. (d). Pub. L. 105-34, §1506(b)(1)(B)(ii), struck out concluding provisions which read as follows: “The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982), a participant or beneficiary of an individual retirement account or an individual retirement annuity (as defined in section 408), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.”

Pub. L. 105-34, §1506(b)(1)(B)(i), substituted “Except as provided in subsection (f)(6), the prohibitions” for “The prohibitions” in introductory provisions.

Subsec. (e)(1)(D) to (F). Pub. L. 105-34, §213(b)(1), struck out “or” at end of subpar. (D), added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (e)(7). Pub. L. 105-34, §1530(c)(10), inserted “and section 664(g)” after “section 409(n)” in concluding provisions.

Subsec. (f)(6). Pub. L. 105-34, §1506(b)(1)(A), added par. (6).

1996—Subsec. (a). Pub. L. 104-188, §1453(a), substituted “10 percent” for “5 percent”.

Subsec. (c)(4). Pub. L. 104-191, §301(f)(1), added par. (4).

Subsec. (d)(13). Pub. L. 104-188, §1702(g)(3), substituted “408(b)(12)” for “408(b)”.

Subsec. (e)(1). Pub. L. 104-191, §301(f)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘plan’ means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (or a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be such a trust, plan, or account).”

1990—Subsec. (d)(13). Pub. L. 101-508 inserted before semicolon at end “or which is exempt from section 406 of such Act by reason of section 408(b) of such Act”.

1986—Subsec. (d). Pub. L. 99-514, §1899A(51), inserted a closing parenthesis after “and (12)” in second sentence.

Subsec. (d)(1)(B). Pub. L. 99-514, §1114(b)(15)(A), substituted “highly compensated employees (within the meaning of section 414(q))” for “highly compensated employees, officers, or shareholders”.

Subsec. (e)(7). Pub. L. 99-514, §1854(f)(3)(A), inserted “, section 409(o), and, if applicable, section 409(n)” in last sentence.

1984—Subsec. (d). Pub. L. 98-369, §491(d)(45), substituted in provision following par. (15) “or an individual retirement annuity (as defined in section 408)” for “, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)”.

Subsec. (e)(1). Pub. L. 98-369, §491(d)(46), struck out “or 405(a)” after “section 403(a)” and “or a retirement bond described in section 409” after “section 408(b)”, and substituted “or annuity” for “annuity, or bond” and “or account” for “account, or bond”.

Subsec. (e)(7). Pub. L. 98-369, §491(e)(7), substituted “section 409(h)” for “section 409A(h)”, “section 409(e)(4)” for “section 409A(e)(4)”, and “section 409(e)” for “section 409A(e)”.

Subsec. (e)(8). Pub. L. 98-369, §491(e)(8), substituted “section 409(l)” for “section 409A(l)”.

1983—Subsec. (d). Pub. L. 97-448 inserted “, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982” after “section 1379” in last sentence.

1980—Subsec. (b). Pub. L. 96-596, §2(a)(1)(K), substituted “taxable period” for “correction period”.

Subsec. (d)(14), (15). Pub. L. 96-364, §208(b), added pars. (14) and (15).

Subsec. (e)(7). Pub. L. 96-222, §101(a)(7)(K), (L)(iv)(III), (v)(XI), substituted references to an employee stock ownership plan, for references to a leveraged employee stock ownership plan wherever appearing therein, and substituted provisions relating to treatment of a plan as an employee stock ownership plan, for provisions relating to treatment of a plan as a leveraged employee stock ownership plan.

Subsec. (e)(8). Pub. L. 96-222, §101(a)(7)(C), substituted provisions defining “qualifying employer security” within the meaning of section 409A(7), for provisions defining such term as stock, or otherwise an equity security, or within the meaning of section 503(e)(1) to (3).

Subsec. (e)(9). Pub. L. 96-364, §209(b), added par. (9).

Subsec. (f)(2)(B), (C). Pub. L. 96-596, §2(a)(2)(I), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(4)(B). Pub. L. 96-596, §2(a)(1)(L), substituted “taxable period” for “correction period”.

Subsec. (f)(6). Pub. L. 96-596, §2(a)(3)(F), struck out par. (6), which defined correction period, with respect to a prohibited transaction, as the period beginning on the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about the correction of the prohibited transaction.

1978—Subsec. (d)(3). Pub. L. 95-600, §141(f)(6), substituted “leveraged employee” for “employee”.

Subsec. (e)(7). Pub. L. 95-600, §141(f)(5), substituted in heading “Leveraged employee” for “Employee”, and in text, “leveraged employee” for “employee” and inserted provision that a plan not be treated as a leveraged employee stock ownership plan unless it meet the requirements of section 409A(e) and (h).

1976—Subsecs. (c) to (f). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title VI, §601(b)(4), Aug. 17, 2006, 120 Stat. 966, as amended by Pub. L. 110-458, title I, §106(a)(3), Dec. 23, 2008, 122 Stat. 5106, provided that: “Except as provided in this subsection [amending this section and enacting provisions set out as notes under this section], the amendments made by this subsection shall apply with respect to advice referred to in section 4975(e)(3)(B) of the Internal Revenue Code of 1986 provided after December 31, 2006.”

Pub. L. 109-280, title VI, §611(h), Aug. 17, 2006, 120 Stat. 975, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1002, 1108, and 1112 of Title 29, Labor] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].

“(2) BONDING RULE.—The amendments made by subsection (b) [amending section 1112 of Title 29] shall apply to plan years beginning after such date.”

Pub. L. 109-280, title VI, §612(c), Aug. 17, 2006, 120 Stat. 977, provided that: “The amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act [Aug. 17, 2006] constitutes a prohibited transaction.”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 413(d) of Pub. L. 109-135, set out as a note under section 1361 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 233(c) of Pub. L. 108-357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108-357, set out as a note under section 512 of this title.

Pub. L. 108-357, title II, §240(b), Oct. 22, 2004, 118 Stat. 1437, provided that: “The amendment made by this section [amending this section] shall apply to distributions with respect to S corporation stock made after December 31, 1997.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

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

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-22 effective July 26, 2001, see section 1(c) of Pub. L. 107-22, set out as a note under section 26 of this title.

Pub. L. 107-16, title VI, §612(c), June 7, 2001, 115 Stat. 100, provided that: “The amendment made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 2001.”

Amendment by section 656(b) of Pub. L. 107-16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107-16, set out as a note under section 409 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 213(b) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105-34, set out as a note under section 26 of this title.

Pub. L. 105-34, title X, §1074(b), Aug. 5, 1997, 111 Stat. 949, provided that: “The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].”

Amendment by section 1506(b)(1) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 1506(c) of Pub. L. 105-34, set out as a note under section 409 of this title.

Amendment by section 1530(c)(10) of Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

Amendment by section 1602(a)(5) of Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

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

Pub. L. 104-188, title I, §1453(b), Aug. 20, 1996, 110 Stat. 1817, provided that: “The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 20, 1996].”

Amendment by section 1702(g)(3) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(15)(A) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99-514, set out as a note under section 414 of this title.

Amendment by section 1854(f)(3)(A) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99-514, set out as a note under section 409 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(45), (46) 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 this title.

Amendment by section 491(e)(7), (8) of Pub. L. 98-369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98-369, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97-448, set out as a note under section 1368 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as an Effective Date note under section 4961 of this title.

Amendment by section 208(b) of Pub. L. 96-364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96-364, set out as an Effective Date note under section 194A of this title.

Amendment by section 209(b) of Pub. L. 96-364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96-364, set out as an Effective Date note under section 194A of this title.

Pub. L. 96-222, title I, §101(b)(1)(C), Apr. 1, 1980, 94 Stat. 205, provided that: “The amendment made by subparagraph (C) of subsection (a)(6) [probably should be ‘(a)(7)’], which amended this section] shall apply to stock acquired after December 31, 1979.”

Amendment by section 101(a)(7)(K), (L)(iv)(III), (v)(XI) of Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95-600, to which such

amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title I, §141(h), as added by Pub. L. 96-222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraphs (5) and (6) of subsection (f) [section 141(f)(5), (6) of Pub. L. 95-600] shall apply—

"(1) insofar as they make the requirements of subsections (e) and (h)(1)(B) of section 409A [now section 409] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applicable to section 4975 of such Code, to stock acquired after December 31, 1979, and

"(2) insofar as they make paragraphs (1)(A) and (2) of section 409A(h) [now section 409(h)] of such Code applicable to such section 4975, to distributions after December 31, 1978."

#### EFFECTIVE DATE; SAVINGS PROVISION

Pub. L. 93-406, title II, §2003(c), Sept. 2, 1974, 88 Stat. 978, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1)(A) The amendments made by this section [enacting this section and amending section 503 of this title] shall take effect on January 1, 1975.

"(B) If, before the amendments made by this section [enacting this section and amending section 503 of this title] take effect, an organization described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503(b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

"(2) Section 4975 of the Internal Revenue Code of 1986 (relating to tax on prohibited transactions) shall not apply to—

"(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

"(B) a lease of joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

"(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

"(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

"(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition:

"(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

"(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1107(a)(2)] and if the plan receives not less than adequate consideration.

For the purposes of this paragraph, the term 'disqualified person' has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1986."

#### REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

#### DETERMINATION OF FEASIBILITY OF APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAMS FOR INDIVIDUAL RETIREMENT AND SIMILAR PLANS

Pub. L. 109-280, title VI, §601(b)(3), Aug. 17, 2006, 120 Stat. 964, provided that:

"(A) SOLICITATION OF INFORMATION.—As soon as practicable after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor, in consultation with the Secretary of the Treasury, shall—

"(i) solicit information as to the feasibility of the application of computer model investment advice programs for plans described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of section 4975(e)(1) of the Internal Revenue Code of 1986, including soliciting information from—

"(I) at least the top 50 trustees of such plans, determined on the basis of assets held by such trustees, and

"(II) other persons offering computer model investment advice programs based on nonproprietary products, and

"(ii) shall on the basis of such information make the determination under subparagraph (B).

The information solicited by the Secretary of Labor under clause (i) from persons described in subclauses (I) and (II) of clause (i) shall include information on computer modeling capabilities of such persons with respect to the current year and preceding year, including such capabilities for investment accounts maintained by such persons.

"(B) DETERMINATION OF FEASIBILITY.—The Secretary of Labor, in consultation with the Secretary of the Treasury, shall, on the basis of information received under subparagraph (A), determine whether there is any computer model investment advice program which may be utilized by a plan described in subparagraph (A)(i) to provide investment advice to the account beneficiary of the plan which—

"(i) utilizes relevant information about the account beneficiary, which may include age, life expectancy,

retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments.

“(ii) takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the account beneficiary, and

“(iii) allows the account beneficiary, in directing the investment of assets, sufficient flexibility in obtaining advice to evaluate and select investment options.

The Secretary of Labor shall report the results of such determination to the committees of Congress referred to in subparagraph (D)(ii) not later than December 31, 2007.

“(C) APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAM.—

“(i) CERTIFICATION REQUIRED FOR USE OF COMPUTER MODEL.—

“(I) RESTRICTION ON USE.—Subclause (II) of section 4975(f)(8)(B)(i) of the Internal Revenue Code of 1986 shall not apply to a plan described in subparagraph (A)(i).

“(II) RESTRICTION LIFTED IF MODEL CERTIFIED.—If the Secretary of Labor determines under subparagraph (B) or (D) that there is a computer model investment advice program described in subparagraph (B), subclause (I) shall cease to apply as of the date of such determination.

“(ii) CLASS EXEMPTION IF NO INITIAL CERTIFICATION BY SECRETARY.—If the Secretary of Labor determines under subparagraph (B) that there is no computer model investment advice program described in subparagraph (B), the Secretary of Labor shall grant a class exemption from treatment as a prohibited transaction under section 4975(c) of the Internal Revenue Code of 1986 to any transaction described in section 4975(d)(17)(A) of such Code with respect to plans described in subparagraph (A)(i), subject to such conditions as set forth in such exemption as are in the interests of the plan and its account beneficiary and protective of the rights of the account beneficiary and as are necessary to—

“(I) ensure the requirements of sections 4975(d)(17) and 4975(f)(8) (other than subparagraph (C) thereof) of the Internal Revenue Code of 1986 are met, and

“(II) ensure the investment advice provided under the investment advice program utilizes prescribed objective criteria to provide asset allocation portfolios comprised of securities or other property available as investments under the plan.

If the Secretary of Labor solicits any information under subparagraph (A) from a person and such person does not provide such information within 60 days after the solicitation, then, unless such failure was due to reasonable cause and not wilful neglect, such person shall not be entitled to utilize the class exemption under this clause.

“(D) SUBSEQUENT DETERMINATION.—

“(i) IN GENERAL.—If the Secretary of Labor initially makes a determination described in subparagraph (C)(ii), the Secretary may subsequently determine that there is a computer model investment advice program described in subparagraph (B). If the Secretary makes such subsequent determination, then the class exemption described in subparagraph (C)(ii) shall cease to apply after the later of—

“(I) the date which is 2 years after such subsequent determination, or

“(II) the date which is 3 years after the first date on which such exemption took effect.

“(ii) REQUESTS FOR DETERMINATION.—Any person may request the Secretary of Labor to make a determination under this subparagraph with respect to any computer model investment advice program, and the Secretary of Labor shall make a determination with respect to such request within 90 days. If the Secretary of Labor makes a determination that such program is not described in subparagraph (B), the

Secretary shall, within 10 days of such determination, notify the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate of such determination and the reasons for such determination.

“(E) EFFECTIVE DATE.—The provisions of this paragraph shall take effect on the date of the enactment of this Act [Aug. 17, 2006].”

#### COORDINATION OF 2006 AMENDMENT WITH EXISTING EXEMPTIONS

Pub. L. 109-280, title VI, §601(c), Aug. 17, 2006, 120 Stat. 966, provided that: “Any exemption under section 408(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(b)] and section 4975(d) of the Internal Revenue Code of 1986 provided by the amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall not in any manner alter existing individual or class exemptions, provided by statute or administrative action.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS

Pub. L. 94-455, title VIII, §803(h), Oct. 4, 1976, 90 Stat. 1590, provided that: “The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently.”

### § 4976. Taxes with respect to funded welfare benefit plans

#### (a) General rule

If—

(1) an employer maintains a welfare benefit fund, and

(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

**(b) Disqualified benefit**

For purposes of subsection (a)—

**(1) In general**

The term “disqualified benefit” means—

(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

(B) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

**(2) Exception for collective bargaining plans**

Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

**(3) Exception for nondeductible contributions**

Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under section 419(d)).

**(4) Exception for certain amounts charged against existing reserve**

Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits (as defined in section 512(a)(3)(E)) or charged against the income on such reserve.

**(c) Definitions**

For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

(Added Pub. L. 98-369, div. A, title V, §511(c)(1), July 18, 1984, 98 Stat. 861; amended Pub. L. 99-514, title XVIII, §1851(a)(11), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100-647, title I, §1011B(a)(27)(A), (B), title III, §3021(a)(1)(C), Nov. 10, 1988, 102 Stat. 3487, 3626; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830.)

**CODIFICATION**

Pub. L. 101-140 amended this section to read as if the amendments made by section 1011B(a)(27) of Pub. L. 100-647 (enacting subsec. (c)) had not been enacted. Sub-

sequent to enactment by Pub. L. 100-647, subsec. (c) was amended by Pub. L. 100-647, §3021(a)(1)(C). See 1988 Amendment note below.

**AMENDMENTS**

1989—Subsec. (b)(5). Pub. L. 101-140 amended subsec. (b) to read as if amendments by Pub. L. 100-647, §1011B(a)(27)(B), had not been enacted, see 1988 Amendment note below.

Subsecs. (c), (d). Pub. L. 101-140 amended this section to read as if amendments by Pub. L. 100-647, §1011B(a)(27)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5). Pub. L. 100-647, §1011B(a)(27)(B), added par. (5) relating to limitation in case of benefits to which section 89 applies.

Subsec. (c). Pub. L. 100-647, §1011B(a)(27)(A), added subsec. (c) relating to tax on funded welfare benefit funds which include discriminatory employee benefit plan. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 100-647, §3021(a)(1)(C)(i), substituted “any testing year (as defined in section 89(j)(13))” for “any plan year”, see Codification note above.

Subsec. (c)(2)(A). Pub. L. 100-647, §3021(a)(1)(C)(ii), substituted “testing” for “plan” in cls. (i) and (ii), see Codification note above.

Subsec. (d). Pub. L. 100-647, §1011B(a)(27)(A), redesignated former subsec. (c) as (d).

1986—Subsec. (b). Pub. L. 99-514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “For purposes of subsection (a), the term ‘disqualified benefit’ means—

“(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

“(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

“(3) any portion of such fund reverting to the benefit of the employer.”

**EFFECTIVE DATE OF 1989 AMENDMENT**

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

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by section 1011B(a)(27)(A), (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 this title.

Amendment by section 3021(a)(1)(C) of Pub. L. 100-647 effective as if included in the amendments by section 1151 of Pub. L. 99-514, see section 3021(d)(1) of Pub. L. 100-647, set out as a note under section 129 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

**EFFECTIVE DATE**

Section applicable to benefits provided after Dec. 31, 1985, see section 511(e)(7) of Pub. L. 98-369, set out as a note under section 419 of this title.

**PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L.

99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**§ 4977. Tax on certain fringe benefits provided by an employer**

**(a) Imposition of tax**

In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

**(b) Excess fringe benefits**

For purposes of subsection (a), the term “excess fringe benefits” means, with respect to any calendar year—

(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

(2) 1 percent of the aggregate amount of compensation—

(A) which was paid by the employer during such calendar year to employees, and

(B) was includible in gross income for purposes of chapter 1.

**(c) Effect of election on section 132(a)**

If—

(1) an election under this section is in effect with respect to an employer for any calendar year, and

(2) at all times on or after January 1, 1984, and before the close of the calendar year involved, substantially all of the employees of the employer were entitled to employee discounts on goods or services provided by the employer in 1 line of business,

for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(h)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

**(d) Period of election**

An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

**(e) Treatment of controlled groups**

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

**(f) Section to apply only to employment within the United States**

Except as otherwise provided in regulations, this section shall apply only with respect to employment within the United States.

(Added Pub. L. 98-369, div. A, title V, §531(e)(1), July 18, 1984, 98 Stat. 885; amended Pub. L. 99-514, title XVIII, §1853(c)(1), (2), Oct. 22, 1986, 100 Stat. 2871; Pub. L. 103-66, title XIII, §13213(d)(3)(D), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104-188, title I, §1704(t)(66), Aug. 20, 1996, 110 Stat. 1890.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-188 substituted “section 132(h)” for “section 132(i)(2)” in closing provisions.

1993—Subsec. (c). Pub. L. 103-66 substituted “section 132(i)(2)” for “section 132(g)(2)” in closing provisions.

1986—Subsec. (c)(2). Pub. L. 99-514, §1853(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business.”.

Subsec. (f). Pub. L. 99-514, §1853(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103-66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as a note under section 132 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

APPLICATION OF SUBSECTION (c) OF THIS SECTION TO  
AGRICULTURAL COOPERATIVES INCORPORATED IN 1964

Pub. L. 99-514, title XVIII, §1853(c)(3), Oct. 22, 1986, 100 Stat. 2871, provided that: “For purposes of determining whether the requirements of section 4977(c) of the Internal Revenue Code of 1954 [now 1986] are met in the case of an agricultural cooperative incorporated in 1964, there shall not be taken into account employees of a member of the same controlled group as such cooperative which became a member during July 1980.”

**§ 4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives**

**(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period**

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied, such plan or cooperative disposes of any qualified securities and—

(1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or

(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition

is less than 30 percent of the total value of all employer securities as of such disposition (60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied),

there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).

**(b) Amount of tax**

**(1) In general**

The amount of the tax imposed by subsection (a) shall be equal to 10 percent of the amount realized on the disposition.

**(2) Limitation**

The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied or acquired in the qualified gratuitous transfer to which section 664(g) applied determined as if such securities were disposed of—

(A) first from qualified securities to which section 1042 applied or to which section 664(g) applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

(B) then from any other employer securities.

If subsection (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.

**(3) Distributions to employees**

The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

**(c) Liability for payment of taxes**

The tax imposed by this subsection shall be paid by—

- (1) the employer, or
- (2) the eligible worker-owned cooperative,

that made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be).

**(d) Section not to apply to certain dispositions**

**(1) Certain distributions to employees**

This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

- (A) the death of the employee,
- (B) the retirement of the employee after the employee has attained 59½ years of age,
- (C) the disability of the employee (within the meaning of section 72(m)(7)), or
- (D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

**(2) Certain reorganizations**

In the case of any exchange of qualified securities in any reorganization described in sec-

tion 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

**(3) Liquidation of corporation into cooperative**

In the case of any exchange of qualified securities pursuant to the liquidation of the corporation issuing qualified securities into the eligible worker-owned cooperative in a transaction which meets the requirements of section 332 (determined by substituting “100 percent” for “80 percent” each place it appears in section 332(b)(1)), such exchange shall not be treated as a disposition for purposes of this section.

**(4) Dispositions to meet diversification requirements**

This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28).

**(e) Definitions and special rules**

For purposes of this section—

**(1) Employee stock ownership plan**

The term “employee stock ownership plan” has the meaning given to such term by section 4975(e)(7).

**(2) Qualified securities**

The term “qualified securities” has the meaning given to such term by section 1042(c)(1); except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1)).

**(3) Eligible worker-owned cooperative**

The term “eligible worker-owned cooperative” has the meaning given to such term by section 1042(c)(2).

**(4) Disposition**

The term “disposition” includes any distribution.

**(5) Employer securities**

The term “employer securities” has the meaning given to such term by section 409(l).

(Added Pub. L. 98-369, div. A, title V, §545(a), July 18, 1984, 98 Stat. 894; amended Pub. L. 99-514, title XVIII, §1854(e), Oct. 22, 1986, 100 Stat. 2880; Pub. L. 100-203, title X, §10413(b)(1), Dec. 22, 1987, 101 Stat. 1330-438; Pub. L. 100-647, title I, §1011B(j)(4), Nov. 10, 1988, 102 Stat. 3492; Pub. L. 101-239, title VII, §7304(a)(2)(C)(ii), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104-188, title I, §1602(b)(4), Aug. 20, 1996, 110 Stat. 1834; Pub. L. 105-34, title XV, §1530(c)(11)-(14), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 108-311, title IV, §408(a)(23), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-311 substituted “(60 percent” for “60 percent”.

1997—Subsec. (a). Pub. L. 105-34, §1530(c)(11)(A), inserted “or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied” after “section 1042 applied” in introductory provisions.

Subsec. (a)(2). Pub. L. 105-34, §1530(c)(11)(B), inserted before comma at end “60 percent of the total value of



all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied”.

Subsec. (b)(2). Pub. L. 105-34, §1530(c)(12)(A), inserted “or acquired in the qualified gratuitous transfer to which section 664(g) applied” after “section 1042 applied” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105-34, §1530(c)(12)(B), inserted “or to which section 664(g) applied” after “section 1042 applied”.

Subsec. (c). Pub. L. 105-34, §1530(c)(13), substituted “written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be)” for “written statement described in section 1042(b)(3)”.

Subsec. (e)(2). Pub. L. 105-34, §1530(c)(14), inserted before period at end “; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1))”.

1996—Subsec. (b)(2). Pub. L. 104-188 added subpars. (A) and (B) and closing provisions and struck out former subpars. (A) to (D) and closing provisions which read as follows:

“(A) first, from section 133 securities (as defined in section 4978B(e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

“(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries.

“(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

“(D) then from any other employer securities.

If subsection (d) or section 4978B(d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.”

1989—Subsec. (b)(2). Pub. L. 101-239 substituted “determined as if such securities were disposed of—”, subpars. (A) to (D), and concluding provision for “(determined as if such securities were disposed of in the order described in section 4978A(e))”.

1988—Subsec. (d)(4). Pub. L. 100-647 added par. (4).

1987—Subsec. (b)(2). Pub. L. 100-203 substituted “(determined as if such securities were disposed of in the order described in section 4978A(e))” for “(determined as if such securities were disposed of before any other securities)”.

1986—Subsec. (a)(1). Pub. L. 99-514, §1854(e)(1), substituted “than” for “then”.

Subsec. (b)(1). Pub. L. 99-514, §1854(e)(2), substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 99-514, §1854(e)(3), substituted “section 1042(b)(3)” for “section 1042(a)(2)(B)”.

Subsec. (d)(1)(C). Pub. L. 99-514, §1854(e)(4), substituted “section 72(m)(7)” for “section 72(m)(5)”.

Subsec. (d)(3). Pub. L. 99-514, §1854(e)(7), added par. (3).

Subsec. (e)(2). Pub. L. 99-514, §1854(e)(5), substituted “section 1042(c)(1)” for “section 1042(b)(1)”.

Subsec. (e)(3). Pub. L. 99-514, §1854(e)(6), substituted “section 1042(c)(2)” for “section 1042(b)(1)”.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104-188 applicable to loans made after Aug. 20, 1996, with excep-

tion and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104-188, set out as an Effective Date of Repeal note under former section 133 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101-239, set out as a note under section 409 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10413(c), Dec. 22, 1987, 101 Stat. 1330-438, provided that: “The amendments made by this section [enacting section 4978A of this title and amending this section] shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE

Pub. L. 98-369, div. A, title V, §545(c), July 18, 1984, 98 Stat. 896, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### [§ 4978A. Repealed. Pub. L. 101-239, title VII, § 7304(a)(2)(C)(i), Dec. 19, 1989, 103 Stat. 2353]

Section, added Pub. L. 100-203, title X, §10413(a), Dec. 22, 1987, 101 Stat. 1330-436; amended Pub. L. 100-647, title VI, §6060(a), Nov. 10, 1988, 102 Stat. 3699, related to tax on certain dispositions of employer securities to which section 2057 applied.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101-239, set out as an Effective Date of 1989 Amendment note under section 409 of this title.

#### [§ 4978B. Repealed. Pub. L. 104-188, title I, § 1602(b)(5)(A), Aug. 20, 1996, 110 Stat. 1834]

Section, added Pub. L. 101-239, title VII, §7301(d)(1), Dec. 19, 1989, 103 Stat. 2347; amended Pub. L. 101-508, title XI, §11701(e), Nov. 5, 1990, 104 Stat. 1388-507, related to tax on disposition of employer securities to which former section 133 of this title applied.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain re-

financings, see section 1602(c) of Pub. L. 104-188, set out as a note under former section 133 of this title.

## **§ 4979. Tax on certain excess contributions**

### **(a) General rule**

In the case of any plan, there is hereby imposed a tax for the taxable year equal to 10 percent of the sum of—

- (1) any excess contributions under such plan for the plan year ending in such taxable year, and
- (2) any excess aggregate contributions under the plan for the plan year ending in such taxable year.

### **(b) Liability for tax**

The tax imposed by subsection (a) shall be paid by the employer.

### **(c) Excess contributions**

For purposes of this section, the term “excess contributions” has the meaning given such term by sections 401(k)(8)(B), 408(k)(6)(C), and 501(c)(18).

### **(d) Excess aggregate contribution**

For purposes of this section, the term “excess aggregate contribution” has the meaning given to such term by section 401(m)(6)(B). For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1).

### **(e) Plan**

For purposes of this section, the term “plan” means—

- (1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),
- (2) any annuity plan described in section 403(a),
- (3) any annuity contract described in section 403(b),
- (4) a simplified employee pension of an employer which satisfies the requirements of section 408(k), and
- (5) a plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

### **(f) No tax where excess distributed within specified period after close of year**

#### **(1) In general**

No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto through the end of the plan year for which the contribution was made) is distributed (or, if forfeitable, is forfeited) before the close of the first 2½ months (6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3))) of the following plan year.

#### **(2) Year of inclusion**

Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient's tax-

able year in which such distributions were made.

(Added Pub. L. 99-514, title XI, §1117(b)(1), Oct. 22, 1986, 100 Stat. 2461; amended Pub. L. 100-647, title I, §1011(l)(8)-(11), Nov. 10, 1988, 102 Stat. 3470, 3471; Pub. L. 109-280, title IX, §902(e)(1)-(3)(A), Aug. 17, 2006, 120 Stat. 1038.)

#### **AMENDMENTS**

2006—Subsec. (f). Pub. L. 109-280, §902(e)(1)(B), substituted “specified period after” for “2½ months of” in heading.

Subsec. (f)(1). Pub. L. 109-280, §902(e)(1)(A), (3)(A), inserted “through the end of the plan year for which the contribution was made” after “thereto” and “(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))” after “2½ months”.

Subsec. (f)(2). Pub. L. 109-280, §902(e)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

“(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than \$100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made.”

1988—Subsec. (a)(1). Pub. L. 100-647, §1011(l)(8), struck out “a cash or deferred arrangement which is part of” after “contributions under”.

Subsec. (c). Pub. L. 100-647, §1011(l)(9), struck out “403(b),” and substituted “408(k)(6)(C)” for “408(k)(8)(B)”.

Subsec. (d). Pub. L. 100-647, §1011(l)(10), inserted sentence at end relating to determination of excess aggregate contributions under certain annuity contracts.

Subsec. (f)(2). Pub. L. 100-647, §1011(l)(11), substituted “Year of inclusion” for “Included in prior year” as heading, and amended text generally. Prior to amendment, text read as follows: “Any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.”

#### **EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109-280, set out as a note under section 401 of this title.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### **EFFECTIVE DATE**

Section applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 401 of this title.

#### **REGULATIONS**

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out this section, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

**§ 4979A. Tax on certain prohibited allocations of qualified securities**

**(a) Imposition of tax**

If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative,

(2) there is an allocation described in section 664(g)(5)(A),

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

**(b) Prohibited allocation**

For purposes of this section, the term “prohibited allocation” means—

(1) any allocation of qualified securities acquired in a sale to which section 1042 applies which violates the provisions of section 409(n), and

(2) any benefit which accrues to any person in violation of the provisions of section 409(n).

**(c) Liability for tax**

The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or  
(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

**(d) Special statute of limitations for tax attributable to certain allocations**

The statutory period for the assessment of any tax imposed by this section on an allocation described in subsection (a)(2) of qualified employer securities shall not expire before the date which is 3 years from the later of—

(1) the 1st allocation of such securities in connection with a qualified gratuitous transfer (as defined in section 664(g)(1)), or

(2) the date on which the Secretary is notified of the allocation described in subsection (a)(2).

**(e) Definitions and special rules**

For purposes of this section—

**(1) Definitions**

Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

**(2) Special rules relating to tax imposed by reason of paragraph (3) or (4) of subsection (a)**

**(A) Prohibited allocations**

The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

**(B) Synthetic equity**

The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

**(C) Special rule during first nonallocation year**

For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

**(D) Statute of limitations**

The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

(Added and amended Pub. L. 99–514, title XI, § 1172(b)(2), title XVIII, § 1854(a)(9)(A), Oct. 22, 1986, 100 Stat. 2514, 2877; Pub. L. 101–239, title VII, § 7304(a)(2)(D), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, § 1704(t)(22), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title XV, § 1530(c)(15)–(17), Aug. 5, 1997, 111 Stat. 1079, 1080; Pub. L. 107–16, title VI, § 656(c), June 7, 2001, 115 Stat. 134.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16, § 656(c)(1), added pars. (3) and (4) and, in concluding provisions, substituted “there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.” for “there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.”

Subsec. (c). Pub. L. 107–16, § 656(c)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “The tax imposed by this section shall be paid by—

“(1) the employer sponsoring such plan, or

“(2) the eligible worker-owned cooperative, which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).”

Subsec. (e). Pub. L. 107–16, § 656(c)(3), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “Terms used in this section have the same respective meaning as when used in section 4978.”

1997—Subsec. (a). Pub. L. 105-34, § 1530(c)(15), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “If there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.”

Subsec. (c). Pub. L. 105-34, § 1530(c)(16), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “The tax imposed by this section shall be paid by—

- “(1) the employer sponsoring such plan, or
- “(2) the eligible worker-owned cooperative,

which made the written statement described in section 1042(b)(3)(B).”

Subsecs. (d), (e). Pub. L. 105-34, § 1530(c)(17), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (c). Pub. L. 104-188 amended directory language of Pub. L. 101-239, § 7304(a)(2)(D)(ii). See 1989 Amendment note below.

1989—Subsec. (b)(1). Pub. L. 101-239, § 7304(a)(2)(D)(i), struck out “or section 2057” after “section 1042”.

Subsec. (c). Pub. L. 101-239, § 7304(a)(2)(D)(ii), as amended by Pub. L. 104-188, struck out “or section 2057(d)” after “section 1042(b)(3)(B)” in concluding provisions.

1986—Subsec. (b)(1). Pub. L. 99-514, § 1172(b)(2)(A), inserted reference to section 2057.

Subsec. (c). Pub. L. 99-514, § 1172(b)(2)(B), inserted reference to section 2057(d).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107-16, set out as a note under section 409 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101-239, set out as a note under section 409 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1172(b)(2) of Pub. L. 99-514 applicable to sales after Oct. 22, 1986, with respect to which election is made by executor of an estate who is required to file the return of the tax imposed by this title on a date (including extensions) after Oct. 22, 1986, see section 1172(c) of Pub. L. 99-514, set out as a note under section 409 of this title.

#### EFFECTIVE DATE

Pub. L. 99-514, title XVIII, § 1854(a)(9)(D), Oct. 22, 1986, 100 Stat. 2878, provided that: “The amendments made by this paragraph [enacting this section and amending section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L.

99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 4980. Tax on reversion of qualified plan assets to employer

#### (a) Imposition of tax

There is hereby imposed a tax of 20 percent of the amount of any employer reversion from a qualified plan.

#### (b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer maintaining the plan.

#### (c) Definitions and special rules

For purposes of this section—

##### (1) Qualified plan

The term “qualified plan” means any plan meeting the requirements of section 401(a) or 403(a), other than—

- (A) a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A, or
- (B) a governmental plan (within the meaning of section 414(d)).

Such term shall include any plan which, at any time, has been determined by the Secretary to be a qualified plan.

##### (2) Employer reversion

###### (A) In general

The term “employer reversion” means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

###### (B) Exceptions

The term “employer reversion” shall not include—

- (i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401,
- (ii) any distribution to the employer which is allowable under section 401(a)(2)—

(I) in the case of a multiemployer plan, by reason of mistakes of law or fact or the return of any withdrawal liability payment,

(II) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or

(III) in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of contributions to be deductible, or

- (iii) any transfer described in section 420(f)(2)(B)(ii)(II).

##### (3) Exception for employee stock ownership plans

###### (A) In general

If, upon an employer reversion from a qualified plan, any applicable amount is

transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or a tax credit employee stock ownership plan (as described in section 409), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) if the requirements of subparagraphs (B), (C), and (D) are met.

**(B) Investment in employer securities**

The requirements of this subparagraph are met if, within 90 days after the transfer (or such longer period as the Secretary may prescribe), the amount transferred is invested in employer securities (as defined in section 409(h)) or used to repay loans used to purchase such securities.

**(C) Allocation requirements**

The requirements of this subparagraph are met if the portion of the amount transferred which is not allocated under the plan to accounts of participants in the plan year in which the transfer occurs—

(i) is credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

(I) the annual addition (as determined under section 415(c)) attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount.

The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or  $\frac{1}{4}$  of the amount attributable to the securities acquired. In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities.

**(D) Participants**

The requirements of this subparagraph are met if at least half of the participants in the qualified plan are participants in the employee stock ownership plan (as of the close of the 1st plan year for which an allocation of the securities is required).

**(E) Applicable amount**

For purposes of this paragraph, the term “applicable amount” means any amount which—

(i) is transferred after March 31, 1985, and before January 1, 1989, or

(ii) is transferred after December 31, 1988, pursuant to a termination which occurs

after March 31, 1985, and before January 1, 1989.

**(F) No credit or deduction allowed**

No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

**(G) Amount transferred to include income thereon, etc.**

The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements.

**(4) Time for payment of tax**

For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs.

**(d) Increase in tax for failure to establish replacement plan or increase benefits**

**(1) In general**

Subsection (a) shall be applied by substituting “50 percent” for “20 percent” with respect to any employer reversion from a qualified plan unless—

(A) the employer establishes or maintains a qualified replacement plan, or

(B) the plan provides benefit increases meeting the requirements of paragraph (3).

**(2) Qualified replacement plan**

For purposes of this subsection, the term “qualified replacement plan” means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the “replacement plan”) with respect to which the following requirements are met:

**(A) Participation requirement**

At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

**(B) Asset transfer requirement**

**(i) 25 percent cushion**

A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

(II) the amount determined under clause (ii).

**(ii) Reduction for increase in benefits**

The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

(II) takes effect immediately on the termination date.

**(iii) Treatment of amount transferred**

In the case of the transfer of any amount under clause (i)—

(I) such amount shall not be includible in the gross income of the employer,

(II) no deduction shall be allowable with respect to such transfer, and

(III) such transfer shall not be treated as an employer reversion for purposes of this section.

**(C) Allocation requirements**

**(i) In general**

In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

**(ii) Coordination with section 415 limitation**

If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

(I) such amount shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

**(iii) Treatment of income**

Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

**(iv) Unallocated amounts at termination**

If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated

as an employer reversion to which this section applies.

**(3) Pro rata benefit increases**

**(A) In general**

The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

(ii) take effect immediately on the termination date.

**(B) Pro rata increase**

For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting "equal to" for "not less than".

**(4) Coordination with other provisions**

**(A) Limitations**

A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

**(B) Treatment as employer contributions**

Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

**(C) 10-year participation requirement**

Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

**(5) Definitions and special rules**

For purposes of this subsection—

**(A) Qualified participant**

The term "qualified participant" means an individual who—

- (i) is an active participant,
- (ii) is a participant or beneficiary in pay status as of the termination date,
- (iii) is a participant not described in clause (i) or (ii)—

(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

- (iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

#### **(B) Present value**

Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

#### **(C) Reallocation of increase**

Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

#### **(D) Plans taken into account**

For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

- (i) 2 or more plans may be treated as 1 plan, or
- (ii) a plan of a successor employer may be taken into account.

#### **(E) Special rule for participation requirement**

For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414(b), (c), (m), or (o) shall be treated as 1 employer.

#### **(6) Subsection not to apply to employer in bankruptcy**

This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law.

(Added Pub. L. 99-514, title XI, §1132(a), Oct. 22, 1986, 100 Stat. 2478; amended Pub. L. 100-647, title I, §1011A(f)(1)-(3), (6), (7), title V, §5072(a), title VI, §6069(a), Nov. 10, 1988, 102 Stat. 3478, 3479, 3681, 3704; Pub. L. 101-508, title XII, §§12001, 12002(a), Nov. 5, 1990, 104 Stat. 1388-562; Pub. L. 104-188, title I, §1704(a), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109-280, title IX, §901(a)(2)(C), Aug. 17, 2006, 120 Stat. 1029; Pub. L. 110-458, title I, §108(i)(3), Dec. 23, 2008, 122 Stat. 5110.)

#### **AMENDMENTS**

2008—Subsec. (c)(2)(B)(iii). Pub. L. 110-458 added cl. (iii).

2006—Subsec. (c)(3)(A). Pub. L. 109-280 substituted “if the requirements of subparagraphs (B), (C), and (D) are met” for “if—

“(i) the requirements of subparagraphs (B), (C), and (D) are met, and

“(ii) under the plan, employer securities to which subparagraph (B) applies must, except to the extent necessary to meet the requirements of section 401(a)(28), remain in the plan until distribution to participants in accordance with the provisions of such plan”.

1996—Subsecs. (a), (d). Pub. L. 104-188 provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101-508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Sections 12001 and 12002(a) of title XII of Pub. L. 101-508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101-508, §12001, which directed the substitution of “20 percent” for “15 percent” in “section 4980(a)” without specifying the Internal Revenue Code of 1986, was executed to subsec. (a) of this section. See 1996 Amendment note above.

Subsec. (d). Pub. L. 101-508, §12002(a), which directed the addition of subsec. (d) to “section 4980” without specifying the Internal Revenue Code of 1986, was executed to this section. See 1996 Amendment note above.

1988—Subsec. (a). Pub. L. 100-647, §6069(a), substituted “15” for “10”.

Subsec. (c)(1)(A). Pub. L. 100-647, §1011A(f)(1), substituted “subtitle A” for “this subtitle”.

Subsec. (c)(3)(A). Pub. L. 100-647, §1011A(f)(2), inserted “or a tax credit employee stock ownership plan (as described in section 409)” after “section 4975(e)(7)” in introductory text, and “, except to the extent necessary to meet the requirements of section 401(a)(28),” after “must” in cl. (ii).

Subsec. (c)(3)(C). Pub. L. 100-647, §1011A(f)(3), struck out “(by reason of the limitations of section 415)” after “not allocated” in introductory text, and inserted sentence at end relating to minimum amount allocated in year of transfer.

Pub. L. 100-647, §1011A(f)(7), inserted sentence at end relating to dividends on securities held in suspense account.

Subsec. (c)(3)(F), (G). Pub. L. 100-647, §1011A(f)(6), added subpars. (F) and (G).

Subsec. (c)(4). Pub. L. 100-647, §5072(a), added par. (4).

#### **EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

#### **EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109-280, set out as a note under section 401 of this title.

#### **EFFECTIVE DATE OF 1990 AMENDMENT**

Pub. L. 101-508, title XII, §12003, Nov. 5, 1990, 104 Stat. 1388-566, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle A (§§12001-12003) of title XII of Pub. L. 101-508, amending this section and sections 1002, 1104, and 1344 of Title 29, Labor] shall apply to reversions occurring after September 30, 1990.

“(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

“(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

“(2) in the case of plans subject to title I [29 U.S.C. 1001 et seq.] (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 1, 1990,

“(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

“(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(f)(1)–(3), (6), (7) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title V, §5072(b), Nov. 10, 1988, 102 Stat. 3681, provided that: “The amendment made by subsection (a) [amending this section] shall apply to reversions after December 31, 1988.”

Pub. L. 100-647, title VI, §6069(b), Nov. 10, 1988, 102 Stat. 3704, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to reversions occurring on or after October 21, 1988.

“(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any reversion on or after October 21, 1988, pursuant to a plan termination if—

“(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 21, 1988,

“(B) with respect to plans subject to title I of such Act [29 U.S.C. 1001 et seq.], a notice of intent to reduce future accruals required under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 21, 1988,

“(C) with respect to plans not subject to title I or IV of such Act, the Board of Directors of the employer approved the termination or the employer took other binding action before October 21, 1988, or

“(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before October 21, 1988, and notice of such order was provided to participants before such date.”

#### EFFECTIVE DATE

Pub. L. 99-514, title XI, §1132(c), Oct. 22, 1986, 100 Stat. 2480, as amended by Pub. L. 100-647, title I, §1011A(f)(4), (5), Nov. 10, 1988, 102 Stat. 3479, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to reversions occurring after December 31, 1985.

“(2) EXCEPTION WHERE TERMINATION DATE OCCURRED BEFORE JANUARY 1, 1986.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall not apply to any reversion after December 31, 1985, which occurs pursuant to a plan termination where the termination date is before January 1, 1986.

“(B) ELECTION TO HAVE AMENDMENTS APPLY.—A corporation may elect to have the amendments made by this section apply to any reversion after 1985 pursu-

ant to a plan termination occurring before 1986 if such corporation was incorporated in the State of Delaware in March, 1978, and became a parent corporation of the consolidated group on September 19, 1978, pursuant to a merger agreement recorded in the State of Nevada on September 19, 1978.

“(3) TERMINATION DATE.—For purposes of paragraph (2), the term ‘termination date’ is the date of the termination (within the meaning of section 411(d)(3) of the Internal Revenue Code of 1986) of the plan.

“(4) TRANSITION RULE FOR CERTAIN TERMINATIONS.—

“(A) IN GENERAL.—In the case of a taxpayer to which this paragraph applies, the amendments made by this section shall not apply to any termination occurring before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986].

“(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to—

“(i) a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma,

“(ii) a corporation incorporated on January 17, 1917, which is located in Coatesville, Pennsylvania,

“(iii) a corporation incorporated on January 23, 1928, which has its principal place of business in New York, New York,

“(iv) a corporation incorporated on April 23, 1956, which has its principal place of business in Dallas, Texas, and

“(v) a corporation incorporated in the State of Nevada, the principal place of business of which is in Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986.

“(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985.”

#### TRANSFER OF EXCESS ASSETS FROM QUALIFIED PENSION PLAN TO WELFARE BENEFIT PLAN

Pub. L. 101-239, title VII, §7861(b), Dec. 19, 1989, 103 Stat. 2430, provided that:

“(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

“(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

“(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

“(B) the welfare benefit plan provides retiree health benefits, and

“(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

“(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such amendment shall not be required to be made before the



first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**[§ 4980A. Repealed. Pub. L. 105-34, title X, § 1073(a), Aug. 5, 1997, 111 Stat. 948]**

Section, added Pub. L. 99-514, title XI, §1133(a), Oct. 22, 1986, 100 Stat. 2481, §4981A; renumbered §4980A and amended Pub. L. 100-647, title I, §1011A(g)(1)(A), (2)-(6), (9), Nov. 10, 1988, 102 Stat. 3479-3482; Pub. L. 102-318, title V, §521(b)(42), July 3, 1992, 106 Stat. 313; Pub. L. 104-188, title I, §§1401(b)(12), 1452(b), Aug. 20, 1996, 110 Stat. 1789, 1816, related to tax on excess distributions from qualified retirement plans.

**EFFECTIVE DATE OF REPEAL**

Pub. L. 105-34, title X, §1073(c), Aug. 5, 1997, 111 Stat. 948, provided that:

“(1) **EXCESS DISTRIBUTION TAX REPEAL.**—Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall apply to excess distributions received after December 31, 1996.

“(2) **EXCESS RETIREMENT ACCUMULATION TAX REPEAL.**—The repeal made by subsection (a) with respect to section 4980A(d) of the Internal Revenue Code of 1986 and the amendments made by subsection (b) [amending sections 691, 2013, 2053, and 6018 of this title] shall apply to estates of decedents dying after December 31, 1996.”

**§ 4980B. Failure to satisfy continuation coverage requirements of group health plans**

**(a) General rule**

There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

**(b) Amount of tax**

**(1) In general**

The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be \$100 for each day in the noncompliance period with respect to such failure.

**(2) Noncompliance period**

For purposes of this section, the term “noncompliance period” means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the earlier of—

- (i) the date such failure is corrected, or
- (ii) the date which is 6 months after the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

If a person is liable for tax under subsection (e)(1)(B) by reason of subsection (e)(2)(B) with respect to any failure, the noncompliance period for such person with respect to such failure shall not begin before the 45th day after the written request described in subsection (e)(2)(B) is provided to such person.

**(3) Minimum tax for noncompliance period where failure discovered after notice of examination**

Notwithstanding paragraphs (1) and (2) of subsection (c)—

**(A) In general**

In the case of 1 or more failures with respect to a qualified beneficiary—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such beneficiary shall not be less than the lesser of \$2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

**(B) Higher minimum tax where violations are more than de minimis**

To the extent violations by the employer (or the plan in the case of a multiemployer plan) for any year are more than de minimis, subparagraph (A) shall be applied by substituting “\$15,000” for “\$2,500” with respect to the employer (or such plan).

**(c) Limitations on amount of tax**

**(1) Tax not to apply where failure not discovered exercising reasonable diligence**

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

**(2) Tax not to apply to failures corrected within 30 days**

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

**(3) \$100 limit on amount of tax for failures on any day with respect to a qualified beneficiary**

**(A) In general**

Except as provided in subparagraph (B), the maximum amount of tax imposed by subsection (a) on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be \$100.

**(B) Special rule where more than 1 qualified beneficiary**

If there is more than 1 qualified beneficiary with respect to the same qualifying event, the maximum amount of tax imposed by subsection (a) on all failures on any day during the noncompliance period with respect to such qualified beneficiaries shall be \$200.

**(4) Overall limitation for unintentional failures**

In the case of failures which are due to reasonable cause and not to willful neglect—

**(A) Single employer plans**

**(i) In general**

In the case of failures with respect to plans other than multiemployer plans, the

tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

- (I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or
- (II) \$500,000.

**(ii) Taxable years in the case of certain controlled groups**

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

**(B) Multiemployer plans**

**(i) In general**

In the case of failures with respect to a multiemployer plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

- (I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 213(d)) directly or through insurance, reimbursement, or otherwise, or
- (II) \$500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as 1 plan.

**(ii) Special rule for employers required to pay tax**

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a multiemployer plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a multiemployer plan.

**(C) Special rule for persons providing benefits**

In the case of a person described in subsection (e)(1)(B) (and not subsection (e)(1)(A)), the aggregate amount of tax imposed by subsection (a) for failures during a taxable year with respect to all plans shall not exceed \$2,000,000.

**(5) Waiver by Secretary**

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

**(d) Tax not to apply to certain plans**

This section shall not apply to—

- (1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary oc-

curred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,

- (2) any governmental plan (within the meaning of section 414(d)), or

- (3) any church plan (within the meaning of section 414(e)).

**(e) Liability for tax**

**(1) In general**

Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

- (A)(i) In the case of a plan other than a multiemployer plan, the employer.
- (ii) In the case of a multiemployer plan, the plan.

- (B) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the plan and whose act or failure to act caused (in whole or in part) the failure.

**(2) Special rules for persons described in paragraph (1)(B)**

**(A) No liability unless written agreement**

Except in the case of liability resulting from the application of subparagraph (B) of this paragraph, a person described in subparagraph (B) (and not in subparagraph (A)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

**(B) Failure to cover qualified beneficiaries where current employees are covered**

A person shall be treated as described in paragraph (1)(B) with respect to a qualified beneficiary if—

- (i) such person provides coverage under a group health plan for any similarly situated beneficiary under the plan with respect to whom a qualifying event has not occurred, and
- (ii) the—

- (I) employer or plan administrator, or
- (II) in the case of a qualifying event described in subparagraph (C) or (E) of subsection (f)(3) where the person described in clause (i) is the plan administrator, the qualified beneficiary,

submits to such person a written request that such person make available to such qualified beneficiary the same coverage which such person provides to the beneficiary referred to in clause (i).

**(f) Continuation coverage requirements of group health plans**

**(1) In general**

A group health plan meets the requirements of this subsection only if the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act)<sup>1</sup>

<sup>1</sup> See References in Text note below.

is not reduced below the coverage provided by the plan as of May 1, 1993, and only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

**(2) Continuation coverage**

For purposes of paragraph (1), the term “continuation coverage” means coverage under the plan which meets the following requirements:

**(A) Type of benefit coverage**

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

**(B) Period of coverage**

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

**(i) Maximum required period**

**(I) General rule for terminations and reduced hours**

In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

**(II) Special rule for multiple qualifying events**

If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

**(III) Special rule for certain bankruptcy proceedings**

In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

**(IV) General rule for other qualifying events**

In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

**(V) Special rule for PBGC recipients**

In the case of a qualifying event described in paragraph (3)(B) with respect

to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974, notwithstanding subclause (I) or (II), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

**(VI) Special rule for TAA-eligible individuals**

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who is (as of the date that the period of coverage would, but for this subclause or subclause (VII), otherwise terminate under subclause (I) or (II)) a TAA-eligible individual (as defined in paragraph (5)(C)(iv)(II)), the period of coverage shall not terminate by reason of subclause (I) or (II), as the case may be, before the later of the date specified in such subclause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

**(VII) Medicare entitlement followed by qualifying event**

In the case of a qualifying event described in paragraph (3)(B) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this clause before the close of the 36-month period beginning on the date the covered employee became so entitled.

**(VIII) Special rule for disability**

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section, any reference in subclause (I) or (II) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months.

**(ii) End of plan**

The date on which the employer ceases to provide any group health plan to any employee.

**(iii) Failure to pay premium**

The date on which coverage ceases under the plan by reason of a failure to make

timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

**(iv) Group health plan coverage or medicare entitlement**

The date on which the qualified beneficiary first becomes, after the date of the election—

(I) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act), or

(II) in the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D) entitled to benefits under title XVIII of the Social Security Act.

**(v) Termination of extended coverage for disability**

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this section, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.

**(C) Premium requirements**

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

- (i) shall not exceed 102 percent of the applicable premium for such period, and
- (ii) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to “102 percent” is deemed a reference to “150 percent” for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).

**(D) No requirement of insurability**

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

**(E) Conversion option**

In the case of a qualified beneficiary whose period of continuation coverage expires

under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

**(3) Qualifying event**

For purposes of this subsection, the term “qualifying event” means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary—

(A) The death of the covered employee.

(B) The termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.

(C) The divorce or legal separation of the covered employee from the employee’s spouse.

(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (g)(1)(D) within one year before or after the date of commencement of the proceeding.

**(4) Applicable premium**

For purposes of this subsection—

**(A) In general**

The term “applicable premium” means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

**(B) Special rule for self-insured plans**

To the extent that a plan is a self-insured plan—

**(i) In general**

Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(I) is determined on an actuarial basis, and

(II) takes into account such factors as the Secretary may prescribe in regulations.

**(ii) Determination on basis of past cost**

If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

**(iii) Clause (ii) not to apply where significant change**

A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

**(C) Determination period**

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

**(5) Election**

For purposes of this subsection—

**(A) Election period**

The term “election period” means the period which—

(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(ii) is of at least 60 days’ duration, and

(iii) ends not earlier than 60 days after the later of—

(I) the date described in clause (i), or

(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

**(B) Effect of election on other beneficiaries**

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (g)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

**(C) Temporary extension of COBRA election period for certain individuals****(i) In general**

In the case of a nonelecting TAA-eligible individual and notwithstanding subpara-

graph (A), such individual may elect continuation coverage under this subsection during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

**(ii) Commencement of coverage; no reach-back**

Any continuation coverage elected by a TAA-eligible individual under clause (i) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

**(iii) Preexisting conditions**

With respect to an individual who elects continuation coverage pursuant to clause (i), the period—

(I) beginning on the date of the TAA-related loss of coverage, and

(II) ending on the first day of the 60-day election period described in clause (i),

shall be disregarded for purposes of determining the 63-day periods referred to in section 9801(c)(2), section 701(c)(2) of the Employee Retirement Income Security Act of 1974, and section 2701(c)(2)<sup>1</sup> of the Public Health Service Act.

**(iv) Definitions**

For purposes of this subsection:

**(I) Nonelecting TAA-eligible individual**

The term “nonelecting TAA-eligible individual” means a TAA-eligible individual who has a TAA-related loss of coverage and did not elect continuation coverage under this subsection during the TAA-related election period.

**(II) TAA-eligible individual**

The term “TAA-eligible individual” means an eligible TAA recipient (as defined in paragraph (2) of section 35(c)) and an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

**(III) TAA-related election period**

The term “TAA-related election period” means, with respect to a TAA-related loss of coverage, the 60-day election period under this subsection which is a direct consequence of such loss.

**(IV) TAA-related loss of coverage**

The term “TAA-related loss of coverage” means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

**(6) Notice requirement**

In accordance with regulations prescribed by the Secretary—

(A) The group health plan shall provide, at the time of commencement of coverage

under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event.

(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled.

(D) The plan administrator shall notify—

(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator. For purposes of subparagraph (D), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

#### **(7) Covered employee**

For purposes of this subsection, the term “covered employee” means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of

services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)).

#### **(8) Optional extension of required periods**

A group health plan shall not be treated as failing to meet the requirements of this subsection solely because the plan provides both—

(A) that the period of extended coverage referred to in paragraph (2)(B) commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under paragraph (6)(B) commences with the date of the loss of coverage.

#### **(g) Definitions**

For purposes of this section—

##### **(1) Qualified beneficiary**

###### **(A) In general**

The term “qualified beneficiary” means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.

###### **(B) Special rule for terminations and reduced employment**

In the case of a qualifying event described in subsection (f)(3)(B), the term “qualified beneficiary” includes the covered employee.

###### **(C) Exception for nonresident aliens**

Notwithstanding subparagraphs (A) and (B), the term “qualified beneficiary” does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

###### **(D) Special rule for retirees and widows**

In the case of a qualifying event described in subsection (f)(3)(F), the term “qualified beneficiary” includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the covered employee, or

(iii) as the surviving spouse of the covered employee.

**(2) Group health plan**

The term “group health plan” has the meaning given such term by section 5000(b)(1). Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).

**(3) Plan administrator**

The term “plan administrator” has the meaning given the term “administrator” by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

**(4) Correction**

A failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the qualified beneficiary is placed in a financial position which is as good as such beneficiary would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the qualified beneficiary shall be treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure first occurred.

(Added Pub. L. 100-647, title III, §3011(a), Nov. 10, 1988, 102 Stat. 3616; amended Pub. L. 101-239, title VI, §§6202(b)(3)(B), 6701(a)-(c), title VII, §§7862(c)(2)(B), (3)(C), (4)(B), (5)(A), 7891(d)(1)(B), (2)(A), Dec. 19, 1989, 103 Stat. 2233, 2294, 2295, 2432, 2433, 2446; Pub. L. 101-508, title XI, §11702(f), Nov. 5, 1990, 104 Stat. 1388-515; Pub. L. 103-66, title XIII, §13422(a), Aug. 10, 1993, 107 Stat. 566; Pub. L. 104-188, title I, §1704(g)(1)(A), (t)(21), Aug. 20, 1996, 110 Stat. 1880, 1888; Pub. L. 104-191, title III, §321(d)(1), title IV, §421(c), Aug. 21, 1996, 110 Stat. 2058, 2088; Pub. L. 107-210, div. A, title II, §203(e)(3), Aug. 6, 2002, 116 Stat. 971; Pub. L. 111-5, div. B, title I, §1899F(b), Feb. 17, 2009, 123 Stat. 429; Pub. L. 111-344, title I, §116(b), Dec. 29, 2010, 124 Stat. 3616; Pub. L. 112-40, title II, §243(a)(3), (4), Oct. 21, 2011, 125 Stat. 420.)

**REFERENCES IN TEXT**

The Public Health Service Act, referred to in subsec. (f)(1), does not contain a section 2162. The reference probably should be to section 1928 of the Social Security Act, which is classified to section 1396s of Title 42, The Public Health and Welfare, and which relates to pediatric vaccines.

The Social Security Act, referred to in subsec. (f)(2)(B)(i)(IV), (VII), (VIII), (iv)(II), (v), (3)(D), (6)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§401 et seq.), XVI (§1381 et seq.), and XVIII (§1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(2)(B)(i)(V), (iv)(I), (5)(C)(iii), and (g)(3), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 832. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Sections 3(16)(A) and 701(c)(2) of the Act are classified to sections 1002(16)(A) and 1181(c)(2), respectively, of Title 29. Title IV of the Act is classified principally to sub-

chapter III (§1301 et seq.) of chapter 18 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (f)(2)(B)(iv)(I), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVII of the Act is classified generally to subchapter XXV (§300gg et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 2701 of the Public Health Service Act, referred to in subsec. (f)(5)(C)(iii), was classified to section 300gg of Title 42, The Public Health and Welfare, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg-3 of Title 42. A new section 2701, related to fair health insurance premiums, was added and amended by Pub. L. 111-148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of Title 42.

**AMENDMENTS**

2011—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 112-40 substituted “January 1, 2014” for “February 12, 2011”.

2010—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 111-344 substituted “February 12, 2011” for “December 31, 2010”.

2009—Subsec. (f)(2)(B)(i)(V). Pub. L. 111-5, §1899F(b)(2), added subcl. (V). Former subcl. (V) redesignated (VII).

Subsec. (f)(2)(B)(i)(VI). Pub. L. 111-5, §1899F(b)(2), added subcl. (VI). Former subcl. (VI) redesignated (VIII).

Pub. L. 111-5, §1899F(b)(1), designated concluding provisions as subcl. (VI) and inserted heading.

Subsec. (f)(2)(B)(i)(VII), (VIII). Pub. L. 111-5, §1899F(b)(2), designated subcls. (V) and (VI) as (VII) and (VIII), respectively.

2002—Subsec. (f)(5)(C). Pub. L. 107-210 added subpar. (C).

1996—Subsec. (f)(2)(B)(i). Pub. L. 104-191, §421(c)(1)(A), in concluding provisions, substituted “at any time during the first 60 days of continuation coverage under this section” for “at the time of a qualifying event described in paragraph (3)(B)”, struck out “with respect to such event” after “(II) to 18 months”, and inserted “(with respect to all qualified beneficiaries)” after “29 months”.

Pub. L. 104-188, §1704(t)(21), made technical amendment to directory language of Pub. L. 101-239, §6701(a)(1). See 1989 Amendment note below.

Subsec. (f)(2)(B)(i)(V). Pub. L. 104-188, §1704(g)(1)(A), substituted “Medicare entitlement followed by qualifying event” for “Qualifying event involving medicare entitlement” in heading and amended text generally. Prior to amendment, text read as follows: “In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act.”

Subsec. (f)(2)(B)(iv)(I). Pub. L. 104-191, §421(c)(1)(B), inserted “(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act)” before “, or”.

Subsec. (f)(2)(B)(v). Pub. L. 104-191, §421(c)(1)(C), substituted “at any time during the first 60 days of continuation coverage under this section” for “at the time of a qualifying event described in paragraph (3)(B)”.

Subsec. (f)(6)(C). Pub. L. 104-191, §421(c)(2), substituted “at any time during the first 60 days of con-

tinuation coverage under this section” for “at the time of a qualifying event described in paragraph (3)(B)”.

Subsec. (g)(1)(A). Pub. L. 104-191, § 421(c)(3), inserted at end “Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.”

Subsec. (g)(2). Pub. L. 104-191, § 321(d)(1), inserted at end “Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).”

1993—Subsec. (f)(1). Pub. L. 103-66 inserted “the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) is not reduced below the coverage provided by the plan as of May 1, 1993, and only if” after “only if”.

1990—Subsec. (d)(1). Pub. L. 101-508 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “any failure of a group health plan to meet the requirements of subsection (f) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year.”

1989—Subsec. (f)(2)(B)(i). Pub. L. 101-239, § 6701(a)(1), as amended by Pub. L. 104-188, § 1704(t)(21), inserted at end “In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B), any reference in subclause (I) or (II) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months.”

Subsec. (f)(2)(B)(i)(V). Pub. L. 101-239, § 7862(c)(5)(A), added subcl. (V).

Subsec. (f)(2)(B)(iv). Pub. L. 101-239, § 7862(c)(3)(C), substituted “entitlement” for “eligibility” in heading and inserted “which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary” after “or otherwise)” in subcl. (I).

Subsec. (f)(2)(B)(v). Pub. L. 101-239, § 6701(a)(2), added cl. (v).

Subsec. (f)(2)(C). Pub. L. 101-239, § 7862(c)(4)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: “If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.”

Pub. L. 101-239, § 6701(b), inserted at end “In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to ‘102 percent’ is deemed a reference to ‘150 percent’ for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).”

Subsec. (f)(6). Pub. L. 101-239, § 7891(d)(1)(B)(ii), inserted after and below subpar. (D) the following new flush sentence “The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.”

Pub. L. 101-239, § 7891(d)(1)(B)(i)(II), inserted “(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)” after “14 days” in last sentence.

Subsec. (f)(6)(B). Pub. L. 101-239, § 7891(d)(1)(B)(i)(I), inserted “(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)” after “30 days”.

Subsec. (f)(6)(C). Pub. L. 101-239, § 6701(c), inserted before period at end “and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualify-

ing event described in paragraph (3)(B) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled”.

Subsec. (f)(7). Pub. L. 101-239, § 7862(c)(2)(B), substituted “the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))” for “the individual’s employment or previous employment with an employer”.

Subsec. (f)(8). Pub. L. 101-239, § 7891(d)(2)(A), added par. (8).

Subsec. (g)(2). Pub. L. 101-239, § 6202(b)(3)(B), substituted “section 5000(b)(1)” for “section 162(i)”.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-40, title II, § 243(b), Oct. 21, 2011, 125 Stat. 420, provided that: “The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb-2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date which is 30 days after the date of the enactment of this Act [Oct. 21, 2011].”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-344, title I, § 116(d), Dec. 29, 2010, 124 Stat. 3616, provided that: “The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb-2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after December 31, 2010.”

#### EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111-5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111-5, div. B, title I, § 1899F(d), Feb. 17, 2009, 123 Stat. 430, provided that: “The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb-2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date of the enactment of this Act [Feb. 17, 2009].”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as a note preceding section 2271 of Title 19.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 321(d)(1) of Pub. L. 104-191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104-191, set out as an Effective Date note under section 7702B of this title.

Pub. L. 104-191, title IV, § 421(d), Aug. 21, 1996, 110 Stat. 2089, provided that: “The amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb-2, 300bb-6, and 300bb-8 of Title 42, The Public Health and Welfare] shall become effective on January 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date.”

Pub. L. 104-188, title I, § 1704(g)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: “The amendments made by this subsection [amending this section, section 1162 of



Title 29, Labor, and section 300bb-2 of Title 42, The Public Health and Welfare] shall apply to plan years beginning after December 31, 1989.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13422(b), Aug. 10, 1993, 107 Stat. 566, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [Aug. 10, 1993].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(3)(B) of Pub. L. 101-239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101-239, set out as a note under section 162 of this title.

Pub. L. 101-239, title VI, §6701(d), Dec. 19, 1989, 103 Stat. 2295, provided that: “The amendments made by this section [amending this section] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.”

Pub. L. 101-239, title VII, §7862(c)(2)(C), Dec. 19, 1989, 103 Stat. 2432, provided that: “The amendments made by this paragraph [amending this section and section 1167 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989.”

Amendment by section 7862(c)(3)(C) of Pub. L. 101-239 applicable to (i) qualifying events occurring after Dec. 31, 1989, and (ii) in the case of qualified beneficiaries who elected continuation coverage after Dec. 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such), see section 7862(c)(3)(D) of Pub. L. 101-239, set out as a note under section 162 of this title.

Pub. L. 101-239, title VII, §7862(c)(4)(C), Dec. 19, 1989, 103 Stat. 2433, provided that: “The amendments made by this paragraph [amending this section and section 1162 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989.”

Pub. L. 101-239, title VII, §7862(c)(5)(C), Dec. 19, 1989, 103 Stat. 2433, provided that: “The amendments made by this paragraph [amending this section and section 1162 of Title 29] shall apply to plan years beginning after December 31, 1989.”

Pub. L. 101-239, title VII, §7891(d)(1)(C), Dec. 19, 1989, 103 Stat. 2446, provided that: “The amendments made by this paragraph [amending this section and section 1166 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990.”

Pub. L. 101-239, title VII, §7891(d)(2)(C), Dec. 19, 1989, 103 Stat. 2447, provided that: “The amendments made by this paragraph [amending this section and section 1167 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990.”

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99-272, see section 3011(d) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note under section 162 of this title.

#### CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107-210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance

coverage, see section 203(f) of Pub. L. 107-210, set out as a Construction note under section 35 of this title.

#### NOTIFICATION OF CHANGES IN CONTINUATION COVERAGE

Pub. L. 104-191, title IV, §421(e), Aug. 21, 1996, 110 Stat. 2089, provided that: “Not later than November 1, 1996, each group health plan (covered under title XXII of the Public Health Service Act [42 U.S.C. 300bb-1 et seq.], part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.], and section 4980B(f) of the Internal Revenue Code of 1986) shall notify each qualified beneficiary who has elected continuation coverage under such title, part or section of the amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb-2, 300bb-6, and 300bb-8 of Title 42, The Public Health and Welfare].”

### § 4980C. Requirements for issuers of qualified long-term care insurance contracts

#### (a) General rule

There is hereby imposed on any person failing to meet the requirements of subsection (c) or (d) a tax in the amount determined under subsection (b).

#### (b) Amount

##### (1) In general

The amount of the tax imposed by subsection (a) shall be \$100 per insured for each day any requirement of subsection (c) or (d) is not met with respect to each qualified long-term care insurance contract.

##### (2) Waiver

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that payment of the tax would be excessive relative to the failure involved.

#### (c) Responsibilities

The requirements of this subsection are as follows:

##### (1) Requirements of model provisions

##### (A) Model regulation

The following requirements of the model regulation must be met:

(i) Section 13 (relating to application forms and replacement coverage).

(ii) Section 14 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

(iii) Section 20 (relating to filing requirements for marketing).

(iv) Section 21 (relating to standards for marketing), including inaccurate completion of medical histories, other than sections 21C(1) and 21C(6) thereof, except that—

(I) in addition to such requirements, no person shall, in selling or offering to sell a qualified long-term care insurance contract, misrepresent a material fact; and

(II) no such requirements shall include a requirement to inquire or identify

whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

(v) Section 22 (relating to appropriateness of recommended purchase).

(vi) Section 24 (relating to standard format outline of coverage).

(vii) Section 25 (relating to requirement to deliver shopper's guide).

#### **(B) Model Act**

The following requirements of the model Act must be met:

(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.

(ii) Section 6G (relating to outline of coverage).

(iii) Section 6H (relating to requirements for certificates under group plans).

(iv) Section 6I (relating to policy summary).

(v) Section 6J (relating to monthly reports on accelerated death benefits).

(vi) Section 7 (relating to incontestability period).

#### **(C) Definitions**

For purposes of this paragraph, the terms "model regulation" and "model Act" have the meanings given such terms by section 7702B(g)(2)(B).

#### **(2) Delivery of policy**

If an application for a qualified long-term care insurance contract (or for a certificate under such a contract for a group) is approved, the issuer shall deliver to the applicant (or policyholder or certificateholder) the contract (or certificate) of insurance not later than 30 days after the date of the approval.

#### **(3) Information on denials of claims**

If a claim under a qualified long-term care insurance contract is denied, the issuer shall, within 60 days of the date of a written request by the policyholder or certificateholder (or representative)—

(A) provide a written explanation of the reasons for the denial, and

(B) make available all information directly relating to such denial.

#### **(d) Disclosure**

The requirements of this subsection are met if the issuer of a long-term care insurance policy discloses in such policy and in the outline of coverage required under subsection (c)(1)(B)(ii) that the policy is intended to be a qualified long-term care insurance contract under section 7702B(b).

#### **(e) Qualified long-term care insurance contract defined**

For purposes of this section, the term "qualified long-term care insurance contract" has the meaning given such term by section 7702B.

#### **(f) Coordination with State requirements**

If a State imposes any requirement which is more stringent than the analogous requirement

imposed by this section or section 7702B(g), the requirement imposed by this section or section 7702B(g) shall be treated as met if the more stringent State requirement is met.

(Added Pub. L. 104-191, title III, § 326(a), Aug. 21, 1996, 110 Stat. 2065.)

#### **EFFECTIVE DATE**

Pub. L. 104-191, title III, § 327, Aug. 21, 1996, 110 Stat. 2066, provided that:

"(a) IN GENERAL.—The provisions of, and amendments made by, this part [part II (§§ 325-327) of subtitle C of title III of Pub. L. 104-191, enacting this section and amending section 7702B of this title] shall apply to contracts issued after December 31, 1996. The provisions of section 321(f) [set out as an Effective Date note under section 7702B of this title] (relating to transition rule) shall apply to such contracts.

"(b) ISSUERS.—The amendments made by section 326 [enacting this section] shall apply to actions taken after December 31, 1996."

#### **§ 4980D. Failure to meet certain group health plan requirements**

##### **(a) General rule**

There is hereby imposed a tax on any failure of a group health plan to meet the requirements of chapter 100 (relating to group health plan requirements).

##### **(b) Amount of tax**

###### **(1) In general**

The amount of the tax imposed by subsection (a) on any failure shall be \$100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

###### **(2) Noncompliance period**

For purposes of this section, the term "noncompliance period" means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the date such failure is corrected.

###### **(3) Minimum tax for noncompliance period where failure discovered after notice of examination**

Notwithstanding paragraphs (1) and (2) of subsection (c)—

###### **(A) In general**

In the case of 1 or more failures with respect to an individual—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such individual shall not be less than the lesser of \$2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

###### **(B) Higher minimum tax where violations are more than de minimis**

To the extent violations for which any person is liable under subsection (e) for any

year are more than de minimis, subparagraph (A) shall be applied by substituting “\$15,000” for “\$2,500” with respect to such person.

**(C) Exception for church plans**

This paragraph shall not apply to any failure under a church plan (as defined in section 414(e)).

**(c) Limitations on amount of tax**

**(1) Tax not to apply where failure not discovered exercising reasonable diligence**

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such tax did not know, and exercising reasonable diligence would not have known, that such failure existed.

**(2) Tax not to apply to failures corrected within certain periods**

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B)(i) in the case of a plan other than a church plan (as defined in section 414(e)), such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such tax knew, or exercising reasonable diligence would have known, that such failure existed, and

(ii) in the case of a church plan (as so defined), such failure is corrected before the close of the correction period (determined under the rules of section 414(e)(4)(C)).

**(3) Overall limitation for unintentional failures**

In the case of failures which are due to reasonable cause and not to willful neglect—

**(A) Single employer plans**

**(i) In general**

In the case of failures with respect to plans other than specified multiple employer health plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) \$500,000.

**(ii) Taxable years in the case of certain controlled groups**

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

**(B) Specified multiple employer health plans**

**(i) In general**

In the case of failures with respect to a specified multiple employer health plan,

the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 9832(d)(3)) directly or through insurance, reimbursement, or otherwise, or

(II) \$500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as one plan.

**(ii) Special rule for employers required to pay tax**

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a specified multiple employer health plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a specified multiple employer health plan.

**(4) Waiver by Secretary**

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

**(d) Tax not to apply to certain insured small employer plans**

**(1) In general**

In the case of a group health plan of a small employer which provides health insurance coverage solely through a contract with a health insurance issuer, no tax shall be imposed by this section on the employer on any failure (other than a failure attributable to section 9811) which is solely because of the health insurance coverage offered by such issuer.

**(2) Small employer**

**(A) In general**

For purposes of paragraph (1), the term “small employer” means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.

**(B) Employers not in existence in preceding year**

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

**(C) Predecessors**

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

**(3) Health insurance coverage; health insurance issuer**

For purposes of paragraph (1), the terms “health insurance coverage” and “health insurance issuer” have the respective meanings given such terms by section 9832.

**(e) Liability for tax**

The following shall be liable for the tax imposed by subsection (a) on a failure:

(1) Except as otherwise provided in this subsection, the employer.

(2) In the case of a multiemployer plan, the plan.

(3) In the case of a failure under section 9803 (relating to guaranteed renewability) with respect to a plan described in subsection (f)(2)(B), the plan.

**(f) Definitions**

For purposes of this section—

**(1) Group health plan**

The term “group health plan” has the meaning given such term by section 9832(a).

**(2) Specified multiple employer health plan**

The term “specified multiple employer health plan” means a group health plan which is—

(A) any multiemployer plan, or

(B) any multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section).

**(3) Correction**

A failure of a group health plan shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had such failure not occurred.

(Added Pub. L. 104-191, title IV, § 402(a), Aug. 21, 1996, 110 Stat. 2084; amended Pub. L. 105-34, title XV, § 1531(b)(2), Aug. 5, 1997, 111 Stat. 1085; Pub. L. 109-135, title IV, § 412(w), Dec. 21, 2005, 119 Stat. 2640.)

## REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(2)(B), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (f)(2)(B), is the date of enactment of Pub. L. 104-191, which was approved Aug. 21, 1996.

## AMENDMENTS

2005—Subsec. (a), Pub. L. 109-135 substituted “plan requirements” for “plans requirements”.

1997—Subsec. (a), Pub. L. 105-34, § 1531(b)(2)(A), substituted “plans” for “plan portability, access, and renewability”.

Subsec. (c)(3)(B)(i)(I), Pub. L. 105-34, § 1531(b)(2)(B), substituted “9832(d)(3)” for “9805(d)(3)”.

Subsec. (d)(1), Pub. L. 105-34, § 1531(b)(2)(C), inserted “(other than a failure attributable to section 9811)” after “on any failure”.

Subsec. (d)(3), Pub. L. 105-34, § 1531(b)(2)(D), substituted “section 9832” for “section 9805”.

Subsec. (f)(1), Pub. L. 105-34, § 1531(b)(2)(E), substituted “section 9832(a)” for “section 9805(a)”.

## EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XV, § 1531(c), Aug. 5, 1997, 111 Stat. 1085, provided that: “The amendments made by this section [enacting sections 9811 and 9812 of this title, amending this section and sections 9801 and 9831 of this title, and renumbering sections 9804 to 9806 of this title as sections 9831 to 9833 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.”

## EFFECTIVE DATE

Pub. L. 104-191, title IV, § 402(c), Aug. 21, 1996, 110 Stat. 2087, provided that: “The amendments made by this section [enacting this section] shall apply to failures under chapter 100 of the Internal Revenue Code of 1986 (as added by section 401 of this Act).”

**§ 4980E. Failure of employer to make comparable Archer MSA contributions****(a) General rule**

In the case of an employer who makes a contribution to the Archer MSA of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

**(b) Amount of tax**

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for taxable years of such employees ending with or within such calendar year.

**(c) Waiver by Secretary**

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

**(d) Employer required to make comparable MSA contributions for all participating employees****(1) In general**

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during such calendar year.

**(2) Comparable contributions****(A) In general**

For purposes of paragraph (1), the term “comparable contributions” means contributions—

(i) which are the same amount, or

(ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

**(B) Part-year employees**

In the case of an employee who is employed by the employer for only a portion of

the calendar year, a contribution to the Archer MSA of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

**(3) Comparable participating employees**

For purposes of paragraph (1), the term “comparable participating employees” means all employees—

(A) who are eligible individuals covered under any high deductible health plan of the employer, and

(B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

**(4) Part-time employees**

**(A) In general**

Paragraph (3) shall be applied separately with respect to part-time employees and other employees.

**(B) Part-time employee**

For purposes of subparagraph (A), the term “part-time employee” means any employee who is customarily employed for fewer than 30 hours per week.

**(e) Controlled groups**

For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

**(f) Definitions**

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220.

(Added Pub. L. 104-191, title III, §301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049; amended Pub. L. 106-554, §1(a)(7) [title II, §202(a)(8), (b)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629; Pub. L. 107-147, title IV, §417(17)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107-147 substituted “Archer MSA contributions” for “medical savings account contributions” in section catchline.

2000—Subsec. (a). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(8)], substituted “Archer MSA” for “medical savings account”.

Subsecs. (b), (d)(1). Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(D)], substituted “Archer MSAs” for “medical savings accounts”.

Subsec. (d)(2)(B). Pub. L. 106-554, §1(a)(7) [title II, §202(a)(8)], substituted “Archer MSA” for “medical savings account”.

EFFECTIVE DATE

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

**§ 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements**

**(a) Imposition of tax**

There is hereby imposed a tax on the failure of any applicable pension plan to meet the require-

ments of subsection (e) with respect to any applicable individual.

**(b) Amount of tax**

**(1) In general**

The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be \$100 for each day in the noncompliance period with respect to such failure.

**(2) Noncompliance period**

For purposes of this section, the term “noncompliance period” means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

**(c) Limitations on amount of tax**

**(1) Tax not to apply where failure not discovered and reasonable diligence exercised**

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

**(2) Tax not to apply to failures corrected within 30 days**

No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

**(3) Overall limitation for unintentional failures**

**(A) In general**

If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed \$500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

**(B) Taxable years in the case of certain controlled groups**

For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

**(4) Waiver by Secretary**

In the case of a failure which is due to reasonable cause and not to willful neglect, the

Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

**(d) Liability for tax**

The following shall be liable for the tax imposed by subsection (a):

- (1) In the case of a plan other than a multi-employer plan, the employer.
- (2) In the case of a multiemployer plan, the plan.

**(e) Notice requirements for plans significantly reducing benefit accruals**

**(1) In general**

If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

**(2) Notice**

The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

**(3) Timing of notice**

Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

**(4) Designs**

Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

**(5) Notice before adoption of amendment**

A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

**(f) Definitions and special rules**

For purposes of this section—

**(1) Applicable individual**

The term “applicable individual” means, with respect to any plan amendment—

- (A) each participant in the plan, and
- (B) any beneficiary who is an alternate payee (within the meaning of section

414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

**(2) Applicable pension plan**

The term “applicable pension plan” means—

- (A) any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or
- (B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

**(3) Early retirement**

A plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of reducing the rate of future benefit accrual.

**(g) New technologies**

The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

(Added Pub. L. 107-16, title VI, § 659(a)(1), June 7, 2001, 115 Stat. 137; amended Pub. L. 107-147, title IV, § 411(u)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109-280, title V, § 502(c)(2), Aug. 17, 2006, 120 Stat. 941.)

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109-280 inserted “and to each employer who has an obligation to contribute to the plan” before period at end.

2002—Subsec. (e)(1). Pub. L. 107-147, § 411(u)(1)(A), substituted “the notice described in paragraph (2)” for “written notice”.

Subsec. (f)(2)(A). Pub. L. 107-147, § 411(u)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “any defined benefit plan, or”.

Subsec. (f)(3). Pub. L. 107-147, § 411(u)(1)(C), struck out “significantly” before “reduces” and before “reducing”.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title V, § 502(d), Aug. 17, 2006, 120 Stat. 941, provided that: “The amendments made by this section [amending this section and sections 1021, 1054, and 1132 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Pub. L. 107-16, title VI, § 659(c), June 7, 2001, 115 Stat. 141, as amended by Pub. L. 107-147, title IV, § 411(u)(3), Mar. 9, 2002, 116 Stat. 52, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1054 of Title 29, Labor] shall apply to plan amendments taking