

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**

**(1) In general**

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 representatives for services rendered by such employee representative.

**(2) Applicable percentage**

For purposes of paragraph (1), the term “applicable percentage” means—

- (A) 14.75 percent in the case of compensation received during 2002,
- (B) 14.20 percent in the case of compensation received during 2003, and
- (C) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

**(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.)

AMENDMENTS

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 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**

**(1) In general**

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 the compensation paid during any calendar year by such employer for services rendered to such employer.

**(2) Applicable percentage**

For purposes of paragraph (1), the term "applicable percentage" means—

- (A) 15.6 percent in the case of compensation paid during 2002,
- (B) 14.2 percent in the case of compensation paid during 2003, and
- (C) in the case of compensation paid during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

**(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 sepa-