

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)).

(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.)

#### 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 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 determined 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.