

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 INDIAN 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 COOPERATIVES

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

**§ 3307. Deductions as constructive payments**

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

(Aug. 16, 1954, ch. 736, 68A Stat. 454.)

**§ 3308. Instrumentalities of the United States**

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

(Added Pub. L. 86-778, title V, §531(d)(1), Sept. 13, 1960, 74 Stat. 983.)

REFERENCES IN TEXT

Enacted before or after the enactment of this section, referred to in 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 COOPERATIVES

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

**§ 3309. 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 respect 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).

<sup>1</sup> See References in Text note below.

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