''(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[1] 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

[1] So in original. Probably should be ''section''.

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—

(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