

§ 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 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 2¾ 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 “6¼ 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 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 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 6¼ 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 there-