

§ 3301. Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to 6 percent of the total wages (as defined in section 3306(b)) paid by such employer during the calendar year with respect to employment (as defined in section 3306(c)).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86-778, title V, §523(a), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87-6, §14(a), Mar. 24, 1961, 75 Stat. 16; Pub. L. 88-31, §2(a), May 29, 1963, 77 Stat. 51; Pub. L. 91-373, title III, §301(a), Aug. 10, 1970, 84 Stat. 713; Pub. L. 92-329, §2(a), June 30, 1972, 86 Stat. 398; Pub. L. 94-455, title XIX, §1903(a)(11), Oct. 4, 1976, 90 Stat. 1808; Pub. L. 94-566, title II, §211(b), Oct. 20, 1976, 90 Stat. 2676; Pub. L. 97-248, title II, §271(b)(1), (c)(1), Sept. 3, 1982, 96 Stat. 554, 555; Pub. L. 99-514, title XVIII, §1899A(42), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 100-203, title IX, §9153(a), Dec. 22, 1987, 101 Stat. 1330-326; Pub. L. 101-508, title XI, §11333(a), Nov. 5, 1990, 104 Stat. 1388-470; Pub. L. 102-164, title IV, §402, Nov. 15, 1991, 105 Stat. 1061; Pub. L. 103-66, title XIII, §13751, Aug. 10, 1993, 107 Stat. 664; Pub. L. 105-34, title X, §1035, Aug. 5, 1997, 111 Stat. 937; Pub. L. 110-140, title XV, §1501(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110-343, div. B, title IV, §404(a), Oct. 3, 2008, 122 Stat. 3860; Pub. L. 111-92, §10(a), Nov. 6, 2009, 123 Stat. 2988; Pub. L. 115-141, div. U, title IV, §401(b)(37), Mar. 23, 2018, 132 Stat. 1204.)

AMENDMENTS

2018—Pub. L. 115-141 substituted “equal to 6 percent of the total wages (as defined in section 3306(b)) paid by such employer during the calendar year with respect to employment (as defined in section 3306(c)).” for “equal to—

“(1) 6.2 percent in the case of calendar years 1988 through 2010 and the first 6 months of calendar year 2011; or

“(2) 6.0 percent in the case of the remainder of calendar year 2011 and each calendar year thereafter; of the total wages (as defined in section 3306(b)) paid by him during the calendar year (or portion of the calendar year) with respect to employment (as defined in section 3306(c)).”

2009—Pub. L. 111-92 inserted “(or portion of the calendar year)” after “during the calendar year” in concluding provisions and substituted “through 2010 and the first 6 months of calendar year 2011” for “through 2009” in par. (1) and “the remainder of calendar year 2011” for “calendar year 2010” in par. (2).

2008—Par. (1). Pub. L. 110-343, §404(a)(1), substituted “through 2009” for “through 2008”.

Par. (2). Pub. L. 110-343, §404(a)(2), substituted “calendar year 2010” for “calendar year 2009”.

2007—Par. (1). Pub. L. 110-140, §1501(a)(1), substituted “2008” for “2007”.

Par. (2). Pub. L. 110-140, §1501(a)(2), substituted “2009” for “2008”.

1997—Par. (1). Pub. L. 105-34, §1035(1), substituted “2007” for “1998”.

Par. (2). Pub. L. 105-34, §1035(2), substituted “2008” for “1999”.

1993—Par. (1). Pub. L. 103-66, §13751(1), substituted “1998” for “1996”.

Par. (2). Pub. L. 103-66, §13751(2), substituted “1999” for “1997”.

1991—Par. (1). Pub. L. 102-164, §402(1), substituted “1996” for “1995”.

Par. (2). Pub. L. 102-164, §402(2), substituted “1997” for “1996”.

1990—Par. (1). Pub. L. 101-508, §11333(a)(1), substituted “1988 through 1995” for “1988, 1989, and 1990”.

Par. (2). Pub. L. 101-508, §11333(a)(2), substituted “1996” for “1991”.

1987—Pars. (1), (2). Pub. L. 100-203 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) 6.2 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act); or

“(2) 6.0 percent, in the case of such first calendar year and each calendar year thereafter;”.

1986—Par. (1). Pub. L. 99-514 substituted “unemployment” for “unemployed”.

1982—Par. (1). Pub. L. 97-248, §271(c)(1)(A), substituted “6.2 percent” for “3.5 percent”.

Pub. L. 97-248, §271(b)(1), substituted “3.5 percent” for “3.4 percent”.

Par. (2). Pub. L. 97-248, §271(c)(1)(B), substituted “6.0 percent” for “3.2 percent”.

1976—Pub. L. 94-566 substituted provisions imposing an excise tax equal to 3.4 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act), or 3.2 percent, in the case of such first calendar year and each calendar year thereafter, of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)), for provisions imposing an excise tax for the calendar year 1970 and each calendar year thereafter, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)) and provisions that, in the case of wages paid during the calendar year 1973, the rate of such tax should be 3.28 percent in lieu of 3.2 percent.

Pub. L. 94-455 substituted “each calendar year” for “the calendar year 1970 and each calendar year thereafter” and struck out provisions relating to the rate of tax in the case of wages paid during the calendar year 1973.

1972—Pub. L. 92-329 inserted provisions setting forth the rate of tax in the case of wages paid during the calendar year 1973.

1970—Pub. L. 91-373 increased the rate from 3.1 percent to 3.2 percent and struck out provisions setting special rates for wages paid during 1962 and 1963.

1963—Pub. L. 88-31 reduced the tax rate for the year 1963 from 3.5 percent to 3.35 percent.

1961—Pub. L. 87-6 provided for a tax rate of 3.5 percent for calendar years 1962 and 1963.

1960—Pub. L. 86-778 substituted “1961” for “1955” and “3.1 percent” for “3 percent”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-92, §10(b), Nov. 6, 2009, 123 Stat. 2989, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title IV, §404(b), Oct. 3, 2008, 122 Stat. 3860, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2008.”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-140, title XV, §1501(b), Dec. 19, 2007, 121 Stat. 1800, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2007.”

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11333(b), Nov. 5, 1990, 104 Stat. 1388-470, provided that: "The amendments made by this section [amending this section] shall apply to wages paid after December 31, 1990."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9153(b), Dec. 22, 1987, 101 Stat. 1330-326, provided that: "The amendment made by subsection (a) [amending this section] shall apply to wages paid on or after January 1, 1988."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §271(d)(1), (2), formerly §271(b)(1), (2), Sept. 3, 1982, 96 Stat. 555, as redesignated by Pub. L. 98-601, §1(a), Oct. 30, 1984, 98 Stat. 3147, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section, sections 3306 and 6157 of this title, and sections 1101 and 1105 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1982.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section, sections 3302 and 6157 of this title, and section 1101 of Title 42] shall apply to remuneration paid after December 31, 1984."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-566, title II, §211(d)(2), Oct. 20, 1976, 90 Stat. 2677, provided that: "The amendment made by subsection (b) [amending this section] shall apply to remuneration paid after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-373, title III, §301(a), Aug. 10, 1970, 84 Stat. 713, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-778, title V, §523(c), Sept. 13, 1960, 74 Stat. 982, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to the calendar year 1961 and calendar years thereafter."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 3302. Credits against tax**(a) Contributions to State unemployment funds**

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in sec-

tion 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting "100 percent" for "90 percent".

(b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

(c) Limit on total credits

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable