

the Social Security Act [42 U.S.C. 503(a)(4)], if such law contains the provisions required by those sections and if it requires that, on or before February 1, 1961, there be paid over to the Secretary of the Treasury, for credit to the Puerto Rico account in the Unemployment Trust Fund, an amount equal to the excess of—

“(A) the aggregate of the moneys received in the Puerto Rico unemployment fund before January 1, 1961, over

“(B) the aggregate of the moneys paid from such fund before January 1, 1961, as unemployment compensation or as refunds of contributions erroneously paid.”

§ 3305. Applicability of State law

(a) Interstate and foreign commerce

No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) Federal instrumentalities in general

The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) National banks

Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall

prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) Federal property

No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[(e) Repealed. Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135]

(f) American vessels

The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) Vessels operated by general agents of United States

The permission granted by subsection (f) shall apply in the same manner and under the same

conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Transportation with respect to service performed by officers and members of the crew on or in connection with American vessels—

- (1) owned by or bareboat chartered to the United States, and
- (2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) Requirement by State of contributions

Any State may, as to service performed on account of which contributions are made pursuant to subsection (g)—

- (1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and
- (2) require general agents of the Secretary of Transportation to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) General agent as legal entity

Each general agent of the Secretary of Transportation making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) Denial of credits in certain cases

Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31,

there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 445; Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135; Pub. L. 86-778, title V, §531(a), (b), Sept. 13, 1960, 74 Stat. 983; Pub. L. 91-373, title I, §123, Aug. 10, 1970, 84 Stat. 702; Pub. L. 94-455, title XIX, §§1903(a)(15), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 114-92, div. C, title XXXV, §3503, Nov. 25, 2015, 129 Stat. 1219.)

AMENDMENTS

2015—Subsecs. (g), (h)(2), (i). Pub. L. 114-92 substituted “Secretary of Transportation” for “Secretary of Commerce”.

1976—Subsec. (g). Pub. L. 94-455, §1903(a)(15)(A), struck out “on or after July 1, 1953,” after “respect to service performed”.

Subsec. (h). Pub. L. 94-455, 1903(a)(15)(B), struck out “on or after July 1, 1953, and” after “as to service performed”.

Subsec. (j). Pub. L. 94-455, §§1903(a)(15)(C), 1906(b)(13)(C), struck out “after December 31, 1971,” after “for any taxable year” and substituted “to the Secretary of the Treasury” for “to the Secretary”.

1970—Subsec. (j). Pub. L. 91-373 added subsec. (j).

1960—Subsec. (b). Pub. L. 86-778, §531(a), substituted “(other than an instrumentality to which section 3306(c)(6) applies)” for “except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law,” and added cl. (C).

Subsec. (g). Pub. L. 86-778, §531(b), substituted “neither wholly nor partially” for “not wholly”.

1954—Subsec. (e). Act Sept. 1, 1954, repealed subsec. (e) which related to the Bonneville Power Administrator.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-778, title V, §535, Sept. 13, 1960, 74 Stat. 985, provided that: “The amendments made by this part [part 3 (§§531-535) of title V of Pub. L. 86-778, enacting section 3308 and amending this section and section 3306 of this title] (other than the amendments made by subsections (e) and (f) of section 531 [amending sections 1361 and 1367 of Title 42, The Public Health and Welfare]) shall apply with respect to remuneration paid after 1961 for services performed after 1961. The amendments made by subsections (e) and (f) of section 531 shall apply with respect to any week of unemployment which begins after December 31, 1960.” [The second sentence of section 535 was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 661.]

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Pub. L. 86-778, title V, §531(g), Sept. 13, 1960, 74 Stat. 984, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Notwithstanding section 203(b) of the Farm Credit Act of 1959, sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and sections 1501(a) and 1507(a) of the Social Security Act [sections 1361(a) and 1367 of Title 42, The Public Health and Welfare] shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.”

§ 3306. Definitions**(a) Employer**

For purposes of this chapter—

(1) In general

The term “employer” means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) Agricultural labor

In the case of agricultural labor, the term “employer” means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) Domestic service

In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term “employer” means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of \$1,000 or more for such service.

(4) Special rule

A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) Wages

For purposes of this chapter, the term “wages” means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all

the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to \$7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term “wages” only payments which are received under a workmen’s compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

[(3) Repealed. Pub. L. 98-21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a pay-