

the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VII, §7106(d), Nov. 10, 1988, 102 Stat. 3774, provided that: "The amendments made by this section [amending this section and sections 3322, 6157, 6201, 6317, 6513, and 6601 of this title, omitting section 3323 of this title, and amending provisions set out as a note under section 231n of Title 45, Railroads], and the provisions of subsection (b) [set out below], shall apply to remuneration paid after December 31, 1988."

#### EFFECTIVE DATE

Pub. L. 98-76, title II, §231(d), Aug. 12, 1983, 97 Stat. 429, provided that: "The amendments made by this section [enacting this chapter and amending sections 6157, 6201, 6317, 6513, and 6601 of this title] shall apply to remuneration paid after June 30, 1986."

#### CONTINUATION OF SURTAX RATE THROUGH 1990

Pub. L. 100-647, title VII, §7106(b), Nov. 10, 1988, 102 Stat. 3773, provided that:

"(1) IN GENERAL.—In the case of any calendar month beginning before January 1, 1991—

"(A) there shall be substituted for '4 percent' in subsections (a) and (b) of section 3321 of the 1986 Code the percentage equal to the sum of—

"(i) 4 percent, plus

"(ii) the surtax rate (if any) for such calendar month, and

"(B) subsection (c) of such section shall not apply to so much of the tax imposed by such section as is attributable to the surtax rate.

"(2) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

"(A) 3.5 percent for each month during a calendar year if, as of September 30, of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act [45 U.S.C. 360(d)], and

"(B) zero for any other calendar month."

### § 3322. Definitions

#### (a) Rail employer

For purposes of this chapter, the term "rail employer" means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.

#### (b) Rail wages

For purposes of this chapter, the term "rail wages" means, with respect to any calendar month, so much of the remuneration paid during such month which is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act.

#### (c) Employee representative

For purposes of this chapter, the term "employee representative" has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

#### (d) Certain rules made applicable

For purposes of this chapter, rules similar to the rules of section 3307 and 3308 shall apply.

(Added Pub. L. 98-76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99-272, title XIII, §13301(d), Apr. 7, 1986, 100 Stat. 327; Pub. L. 100-647, title VII, §7106(a), Nov. 10, 1988, 102 Stat. 3773.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 1 of the Railroad Unemployment Insurance Act, referred to in subsections (a) and (c), is classified to section 351 of Title 45, Railroads.

Section 8(a) of the Railroad Unemployment Insurance Act, referred to in subsection (b), is classified to section 358(a) of Title 45.

#### AMENDMENTS

1988—Pub. L. 100-647 amended section generally, substituting present provisions for former provisions relating to taxable period, which had provided, in subsection (a), for a general rule and, in subsection (b), for earlier termination if loans to rail unemployment fund repaid.

1986—Subsec. (a)(2), (3). Pub. L. 99-272, §13301(d)(1), struck out "and before 1990, and" after "1986" in par. (2) and struck out par. (3) relating to the period beginning on Jan. 1, 1990, and ending on Sept. 30, 1990.

Subsec. (b). Pub. L. 99-272, §13301(d)(2), substituted "The basic rate under section 3321(c)(1)(A) of the tax imposed by section 3321 shall not apply" for "The tax imposed by this chapter shall not apply" in introductory provision, and inserted "made before October 1, 1985," in par. (1).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100-647, set out as a note under section 3321 of this title.

#### EXCLUSION FROM WAGES AND COMPENSATION OF RE-FUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term "rail wages" shall not include the amount of any refund required under section 421 of Pub. L. 100-360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101-239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

### [§ 3323. Omitted]

Section, added Pub. L. 98-76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99-272, title XIII, §13301(b), Apr. 7, 1986, 100 Stat. 326, contained definitions, prior to the general amendment of this chapter by Pub. L. 100-647, §7106(a). See section 3322 of this title.

### CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec.	
3401.	Definitions.
3402.	Income tax collected at source.
3403.	Liability for tax.
3404.	Return and payment by governmental employer.
3405.	Special rules for pensions, annuities, and certain other deferred income. <sup>1</sup>
3406.	Backup withholding.
	[3451 to 3456. Repealed.]

### Editorial Notes

#### AMENDMENTS

1983—Pub. L. 98-67, title I, §§102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

<sup>1</sup> Editorially supplied. Section 3405 added by Pub. L. 97-248 without corresponding amendment of analysis.

1982—Pub. L. 97-248, title III, §§307(b)(4), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 24 is amended by striking out “ON WAGES”, items for subchapters A and B are added in analysis, and heading “Subchapter A—Withholding From Wages” is added. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

### § 3401. Definitions

#### (a) Wages

For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section,

(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)),

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority,

(4) for service not in the course of the employer’s trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer’s trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter,

(5) for services by a citizen or resident of the United States for a foreign government or an international organization,

(6) for such services, performed by a non-resident alien individual, as may be designated by regulations prescribed by the Secretary,

[(7) Repealed. Pub. L. 89-809, title I, §103(k), Nov. 13, 1966, 80 Stat. 1554]

(8)(A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such

remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911, or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration,

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services,

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico, or

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession,

(9) for services performed 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,

(10)(A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back,

(11) for services not in the course of the employer’s trade or business, to the extent paid in any medium other than cash,

(12) 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,

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