

“(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

“(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B).”

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.	
3501.	Collection and payment of taxes.
3502.	Nondeductibility of taxes in computing taxable income.
3503.	Erroneous payments.
3504.	Acts to be performed by agents.
3505.	Liability of third parties paying or providing for wages.
3506.	Individuals providing companion sitting placement services.
3507.	Advance payment of earned income credit.
3508.	Treatment of real estate agents and direct sellers.
3509.	Determination of employer's liability for certain employment taxes.
3510.	Coordination of collection of domestic service employment taxes with collection of income taxes.

AMENDMENTS

1994—Pub. L. 103-387, §2(b)(2), Oct. 22, 1994, 108 Stat. 4074, added item 3510.

1990—Pub. L. 101-508, title XI, §11801(b)(16), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 3510 “Credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984”.

1983—Pub. L. 98-67 repealed amendments made by section 307 of Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 98-21, title I, §123(b)(2), Apr. 20, 1983, 97 Stat. 88, added item 3510.

1982—Pub. L. 97-248, title II, §§269(d), 270(b), Sept. 3, 1982, 96 Stat. 553, 554, added items 3508 and 3509.

Pub. L. 97-248, title III, §§307(b)(5), 308(a), Sept. 3, 1982, 96 Stat. 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 25 is amended by inserting “AND COLLECTION OF INCOME TAXES AT SOURCE”. 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 L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub.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.

1978—Pub. L. 95-600, title I, §105(b)(2), Nov. 6, 1978, 92 Stat. 2776, added item 3507.

1977—Pub. L. 95-171, §10(b), Nov. 12, 1977, 91 Stat. 1356, added item 3506.

1966—Pub. L. 89-719, title I, §105(c), Nov. 2, 1966, 80 Stat. 1139, added item 3505.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 section 1421i.

§ 3501. Collection and payment of taxes

(a) General rule

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) Taxes with respect to non-cash fringe benefits

The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be col-

lected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; July 18, 1984, Pub. L. 98-369, div. A, title V, §531(d)(5), 98 Stat. 885.)

AMENDMENTS

1984—Pub. L. 98-369 designated existing provisions as subsec. (a), added heading, and added subsec. (b).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

§ 3502. Nondeductibility of taxes in computing taxable income

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Sept. 3, 1982, Pub. L. 97-248, title III, §§305(b), 308(a), 96 Stat. 588, 591; Aug. 5, 1983, Pub. L. 98-67, title I, §102(a), 97 Stat. 369.)

AMENDMENTS

1983—Subsecs. (b), (c). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Subsecs. (b), (c). Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (b) is amended and a new subsec. (c) 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.

CROSS REFERENCES

Credit for amount withheld, see section 31 of this title.

Taxes paid deductible from gross income, see section 164 of this title.

§ 3503. Erroneous payments

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 471.)

CROSS REFERENCES

Civil action for refund, see section 7422 of this title.
Jurisdiction of district courts of actions by taxpayers for refund, see sections 1340 and 1346 of Title 28, Judiciary and Judicial Procedure.

Refund to employer of overpayment of withholding tax, see section 6414 of this title.

§ 3504. Acts to be performed by agents

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary may specify. Except as may be otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Sept. 2, 1958, Pub. L. 85-866, title I, §71, 72 Stat. 1660; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in three places.

1958—Pub. L. 85-866 substituted “title” for “subtitle” in first sentence.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 71 of Pub. L. 85-866 provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1954.

§ 3505. Liability of third parties paying or providing for wages

(a) Direct payment by third parties

For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) Personal liability where funds are supplied

If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the

liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment

Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

(Added Pub. L. 89-719, title I, §105(a), Nov. 2, 1966, 80 Stat. 1138.)

EFFECTIVE DATE

Section applicable only with respect to wages paid on or after Jan. 1, 1967, see section 114(c)(1) of Pub. L. 89-719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

§ 3506. Individuals providing companion sitting placement services

(a) In general

For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

(b) Definition

For purposes of this section, the term “sitters” means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(Added Pub. L. 95-171, §10(a), Nov. 12, 1977, 91 Stat. 1356.)

EFFECTIVE DATE

Section 10(c) of Pub. L. 95-171 provided that: “The amendments made by this section [enacting this section] shall apply to remuneration received after December 31, 1974.”

UNEMPLOYMENT COMPENSATION OR SOCIAL SECURITY BENEFITS BASED ON SERVICES PERFORMED BEFORE NOVEMBER 12, 1977, UNAFFECTED

Section 10(d) of Pub. L. 95-171 provided that: “The amendments made by this section [enacting this section] shall not be construed as affecting (1) any individual’s right to receive unemployment compensation based on services performed before the date of the enactment of this Act [Nov. 12, 1977], or (2) any individual’s eligibility for social security benefits to the extent based on services performed before that date.”

§ 3507. Advance payment of earned income credit

(a) General rule

Except as otherwise provided in this section, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee’s earned income advance amount.

(b) Earned income eligibility certificate

For purposes of this title, an earned income eligibility certificate is a statement furnished by an employee to the employer which—

- (1) certifies that the employee will be eligible to receive the credit provided by section 32 for the taxable year,
- (2) certifies that the employee has 1 or more qualifying children (within the meaning of section 32(c)(3)) for such taxable year,
- (3) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and
- (4) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) Earned income advance amount**(1) In general**

For purposes of this title, the term "earned income advance amount" means, with respect to any payroll period, the amount determined—

- (A) on the basis of the employee's wages from the employer for such period, and
- (B) in accordance with tables prescribed by the Secretary.

In the case of an employee who is a member of the Armed Forces of the United States, the earned income advance amount shall be determined by taking into account such employee's earned income as determined for purposes of section 32.

(2) Advance amount tables

The tables referred to in paragraph (1)(B)—

- (A) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables, and
- (B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

- (i) of not more than 60 percent of the credit percentage in effect under section 32(b)(1) for an eligible individual with 1 qualifying child and with earned income not in excess of the earned income amount in effect under section 32(b)(2) for such an eligible individual, which

- (ii) phases out at 60 percent of the phase-out percentage in effect under section 32(b)(1) for such an eligible individual between the phaseout amount in effect under section 32(b)(2) for such an eligible individual and the amount of earned income at which the credit under section 32(a) phases out for such an eligible individual, or

- (C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit as if it

were a credit determined under subparagraph (B) by substituting $\frac{1}{2}$ of the amounts of earned income described in such subparagraph for such amounts.

(d) Payments to be treated as payments of withholding and FICA taxes**(1) In general**

For purposes of this title, payments made by an employer under subsection (a) to his employees for any payroll period—

(A) shall not be treated as the payment of compensation, and

(B) shall be treated as made out of—

- (i) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding), and

- (ii) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

- (iii) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes),

as if the employer had paid to the Secretary, on the day on which the wages are paid to the employees, an amount equal to such payments.

(2) Advance payments exceed taxes due

In the case of any employer, if for any payroll period the aggregate amount of earned income advance payments exceeds the sum of the amounts referred to in paragraph (1)(B), each such advance payment shall be reduced by an amount which bears the same ratio to such excess as such advance payment bears to the aggregate amount of all such advance payments.

(3) Employer may make full advance payments

The Secretary shall prescribe regulations under which an employer may elect (in lieu of any application of paragraph (2))—

(A) to pay in full all earned income advance amounts, and

(B) to have additional amounts paid by reason of this paragraph treated as the advance payment of taxes imposed by this title.

(4) Failure to make advance payments

For purposes of this title (including penalties), failure to make any advance payment under this section at the time provided therefor shall be treated as the failure at such time to deduct and withhold under chapter 24 an amount equal to the amount of such advance payment.

(e) Furnishing and taking effect of certificates

For purposes of this section—

(1) When certificate takes effect**(A) First certificate furnished**

An earned income eligibility certificate furnished the employer in cases in which no previous such certificate had been in effect for the calendar year shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or

after the date on which such certificate is so furnished (or if later, the first day of the calendar year for which furnished).

(B) Later certificate

An earned income eligibility certificate furnished the employer in cases in which a previous such certificate had been in effect for the calendar year shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section, the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(2) Period during which certificate remains in effect

An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) Change of status

(A) Requirement to revoke or furnish new certificate

If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 32 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

(B) Certificate no longer in effect

If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) Form and contents of certificate

Earned income eligibility certificates shall be in such form and contain such other information as the Secretary may by regulations prescribe.

(5) Taxable year defined

The term "taxable year" means the last taxable year of the employee under subtitle A beginning in the calendar year in which the wages are paid.

(f) Internal Revenue Service notification

The Internal Revenue Service shall take such steps as may be appropriate to ensure that taxpayers who have 1 or more qualifying children and who receive a refund of the credit under section 32 are aware of the availability of earned income advance amounts under this section.

(Added Pub. L. 95-600, title I, §105(b)(1), Nov. 6, 1978, 92 Stat. 2773; amended Pub. L. 97-248, title III, §§307(a)(3), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title IV, §474(r)(30), title X, §1042(d)(3), (4), July 18, 1984, 98 Stat. 845, 1044; Pub. L. 99-514, title I, §111(d)(2), (3), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 101-508, title XI, §1111(c), Nov. 5, 1990, 104 Stat. 1388-412; Pub. L. 103-66, title XIII, §13131(d)(4)-(6), Aug. 10, 1993, 107 Stat. 435; Pub. L. 103-465, title VII, §721(c), Dec. 8, 1994, 108 Stat. 5002.)

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103-465 inserted concluding provisions.

1993—Subsec. (b)(2) to (4). Pub. L. 103-66, §13131(d)(4), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (c)(2)(B)(i), (ii). Pub. L. 103-66, §13131(d)(5), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

"(i) of not more than the credit percentage under section 32(b)(1) (without regard to subparagraph (D) thereof) for an eligible individual with 1 qualifying child and with earned income not in excess of the amount of earned income taken into account under section 32(a)(1), which

"(ii) phases out between the amount of earned income at which the phaseout begins under section 32(b)(1)(B)(ii) and the amount of income at which the credit under section 32(a)(1) phases out for an eligible individual with 1 qualifying child, or".

Subsec. (f). Pub. L. 103-66, §13131(d)(6), added subsec. (f).

1990—Subsec. (c)(2)(B), (C). Pub. L. 101-508 amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than 14 percent of earned income not in excess of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between the amount of earned income at which the phaseout begins under subsection (b) of section 32 and the amount of earned income at which the credit under section 32 is phased out under such subsection, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than 14 percent of earned income not in excess of ½ of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between amounts of earned income which are ½ of the amounts of earned income described in subparagraph (B)(ii)."

1986—Subsec. (c)(2)(B). Pub. L. 99-514, §111(d)(2), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) of not more than 11 percent of the first \$5,000 of earned income, which

“(ii) phases out between \$6,500 and \$11,000 of earned income, or”.

Subsec. (c)(2)(C). Pub. L. 99-514, §111(d)(3), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) of not more than 11 percent of the first \$2,500 of earned income, which

“(ii) phases out between \$3,250 and \$5,500 of earned income.”

1984—Subsec. (b)(1). Pub. L. 98-369, §474(r)(30), substituted “section 32” for “section 43”.

Subsec. (c)(2)(B). Pub. L. 98-369, §474(r)(30), substituted “section 32” for “section 43” in provisions preceding cl. (i).

Subsec. (c)(2)(B)(i). Pub. L. 98-369, §1042(d)(3), substituted “11 percent” for “10 percent”.

Subsec. (c)(2)(B)(ii). Pub. L. 98-369, §1042(d)(3), substituted “\$6,500 and \$11,000” for “\$6,000 and \$10,000”.

Subsec. (c)(2)(C). Pub. L. 98-369, §474(r)(30), substituted “section 32” for “section 43” in provisions preceding cl. (i).

Subsec. (c)(2)(C)(i). Pub. L. 98-369, §1042(d)(4), substituted “11 percent” for “10 percent”.

Subsec. (c)(2)(C)(ii). Pub. L. 98-369, §1042(d)(4), substituted “\$3,250 and \$5,500” for “\$3,000 and \$5,000”.

Subsec. (c)(3)(A)(i). Pub. L. 98-369, §474(r)(30), substituted “section 32” for “section 43”.

1983—Subsec. (d)(4). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Subsec. (d)(4). Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (4) is amended by inserting “subchapter A of” before “chapter 24”. 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.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 721(d)(2) of Pub. L. 103-465 provided that: “The amendments made by subsections (b) and (c) [amending this section and section 6051 of this title] shall apply to remuneration paid after December 31, 1994.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103-66, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101-508, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(30) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 1042(d)(3), (4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 1042(e) of Pub. L. 98-369, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 105(g)(2) of Pub. L. 95-600, as amended by Pub. L. 96-222, title I, §101(a)(2)(D), Apr. 1, 1980, 94 Stat. 195, provided that: “The amendments made by subsections (b), (c), and (e) [enacting this section and amending sections 6051 and 6302 of this title] shall apply to remuneration paid after June 30, 1979.”

STUDY OF ADVANCE PAYMENTS

Section 11113 of title XI of Pub. L. 101-508 provided that:

“(a) IN GENERAL.—The Comptroller General of the United States shall, in consultation with the Secretary of the Treasury, conduct a study of advance payments required by section 3507 of the Internal Revenue Code of 1986 to determine—

“(1) the effectiveness of the advance payment system (including an analysis of why so few employees take advantage of such system), and

“(2) the manner in which such system can be implemented to alleviate administrative complexity, if any, for small business, and

“(3) if there are any other problems in the administration of such system.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this title [Nov. 5, 1990], the Comptroller shall report the results of the study conducted under subsection (a), together with any recommendations, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the House of Representatives.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 6012, 6051, 6302 of this title; title 7 section 2014; title 42 sections 602, 1382a, 1382b.

§ 3508. Treatment of real estate agents and direct sellers

(a) General rule

For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) Definitions

For purposes of this section—

(1) Qualified real estate agent

The term “qualified real estate agent” means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) Direct seller

The term “direct seller” means any person if—

(A) such person—

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or

(iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) Coordination with retirement plans for self-employed

This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(Added Pub. L. 97-248, title II, §269(a), Sept. 3, 1982, 96 Stat. 551; amended Pub. L. 104-188, title I, §1118(a), Aug. 20, 1996, 110 Stat. 1764.)

AMENDMENTS

1996—Subsec. (b)(2)(A). Pub. L. 104-188 added cl. (iii).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1118(b) of Pub. L. 104-188 provided that: “The amendments made by this section shall apply to services performed after December 31, 1995.”

EFFECTIVE DATE

Section 269(e) of Pub. L. 97-248 provided that: “(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1982.

“(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

Section 269(c)(3) of Pub. L. 97-248 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].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 410.

§ 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) sections¹ 3402(d) and section 6521 shall not apply.

¹ So in original. Probably should be “section”.

(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

Section 270(c) of Pub. L. 97-248 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 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).

(4) Transitional rule

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.

(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.)

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.

EFFECTIVE DATE

Section 2(b)(3) of Pub. L. 103-387 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

Section 2(b)(4) of Pub. L. 103-387 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.”

Subtitle D—Miscellaneous Excise Taxes

Chapter		Sec. ¹
31.	Retail excise taxes	4001
32.	Manufacturers excise taxes	4061
33.	Facilities and services	4231
34.	Documentary stamp taxes ²	4371
35.	Taxes on wagering	4401
36.	Certain other excise taxes	4451
[37.	Repealed.]	
38.	Environmental taxes	4611
39.	Registration-required obligations	4701
40.	General provisions relating to occupational taxes	4901
41.	Public charities	4911
42.	Private foundations; and certain other tax-exempt organizations	4940
43.	Qualified pension, etc., plans	4971
44.	Real estate investment trusts	4981
[45.	Repealed.]	
46.	Golden parachute payments	4999
47.	Certain group health plans	5000

¹Section numbers editorially supplied.
²Chapter heading amended by Pub. L. 94-455 without corresponding amendment of analysis.

AMENDMENTS

- 1990—Pub. L. 101-508, title XI, §11801(b)(17), Nov. 5, 1990, 104 Stat. 1388-522, struck out item for chapter 37 “Sugar, coconut and palm oil”.
- 1989—Pub. L. 101-239, title VI, §6202(b)(4)(B), title VII, §7841(d)(4), Dec. 19, 1989, 103 Stat. 2233, 2428, substituted semicolon for comma in item for chapter 42 and struck out “large” after “Certain” in item for chapter 47.
- 1988—Pub. L. 100-418, title I, §1941(b)(3)(A), Aug. 23, 1988, 102 Stat. 1324, struck out item for chapter 45 “Windfall profit tax on domestic crude oil”.
- 1987—Pub. L. 100-203, title X, §10712(c)(8), Dec. 22, 1987, 101 Stat. 1330-467, substituted “and certain other tax-exempt organizations” for “black lung benefit trusts” in item for chapter 42.
- 1986—Pub. L. 99-509, title IX, §9319(d)(2), Oct. 21, 1986, 100 Stat. 2012, added item for chapter 47.
- 1984—Pub. L. 98-369, div. A, title I, §67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.
- 1983—Pub. L. 97-424, title V, §512(b)(2)(B), Jan. 6, 1983, 96 Stat. 2177, substituted “Retail excise taxes” for “Special fuels” in item for chapter 31.
- 1982—Pub. L. 97-248, title III, §310(b)(4)(B), Sept. 3, 1982, 96 Stat. 598, added item for chapter 39.
- 1980—Pub. L. 96-510, title II, §211(b), Dec. 11, 1980, 94 Stat. 2801, added item for chapter 38.
- Pub. L. 96-223, §101(a)(2), Apr. 2, 1980, 94 Stat. 250, added item for chapter 45.
- 1978—Pub. L. 95-227, §4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, inserted “, black lung benefit trusts” after “foundations” in item for chapter 42.
- 1976—Pub. L. 94-455, title XIII, §1307(d)(3)(A), title XVI, §1605(c), title XIX, §§1904(b)(7)(E), (10)(G), 1952(n)(6), Oct. 4, 1976, 90 Stat. 1728, 1755, 1815, 1818, 1846, substituted “41. Public charities” for “41. Interest equalization tax” added item for chapter 44 and struck out items for chapters “38. Import taxes” and “39. Regulatory taxes”.
- 1974—Pub. L. 93-406, title II, §1016(b)(2), Sept. 2, 1974, 88 Stat. 932, added item for chapter 43.
- 1969—Pub. L. 91-172, title I, §101(j)(59), Dec. 30, 1969, 83 Stat. 532, added item for chapter 42.
- 1964—Pub. L. 88-563, §2(b), Sept. 2, 1964, 78 Stat. 841, added item for chapter 41.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 6103, 6110, 6302, 6501, 6676, 6724, 7463, 7851 of this title.

CHAPTER 31—RETAIL EXCISE TAXES

Subchapter		Sec. ¹
A.	Luxury passenger vehicles ²	4001
B.	Special fuels	4041
C.	Heavy trucks and trailers	4051

PRIOR PROVISIONS

The provisions of a prior chapter 31, Miscellaneous Excise Taxes, were set out as:

- Subchapter (A), Jewelry and related items, comprising sections 4001 to 4003;
- Subchapter (B), Furs, comprising sections 4011 to 4013;
- Subchapter (C), Toilet preparations, comprising sections 4021 and 4022;
- Subchapter (D), Luggage, handbags, etc., comprising section 4031;
- Subchapter (E), Special fuels, comprising sections 4041 and 4042; and
- Subchapter (F), Special provisions applicable to retailers tax, comprising sections 4051 to 4058.

The headings for subchs. (A) to (D) were struck out by section 101(b)(1) and the listed sections were repealed by section 101(a) of Pub. L. 89-44, title I, June 21, 1965, 79 Stat. 136, the Excise Tax Reduction Act of 1965, applicable with respect to articles sold on or after June

¹Section numbers editorially supplied.
²So in original. Does not conform to subchapter heading.