

## CREDITS AGAINST UNEMPLOYMENT TAX

APRIL 19, 1960.—Ordered to be printed

Mr. KERR, from the Committee on Finance, submitted the following

### R E P O R T

[To accompany H.R. 6482]

The Committee on Finance, to whom was referred the bill (H.R. 6482) relating to the credits against the unemployment tax in the case of merged corporations, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, beginning with line 7, strike out all through line 14 on page 2 and insert the following:

(d) **SUCCESSOR EMPLOYER.**—Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in a trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place, then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

Amend the title so as to read:

An act relating to the credits against the unemployment tax in the case of certain successor employers.

#### GENERAL STATEMENT

The Federal unemployment tax of 3 percent of the first \$3,000 of each employee's wages is levied on a calendar year basis upon employers who have four or more employees in each of 20 weeks during the calendar year. Section 3302 of the Internal Revenue Code grants a credit against the Federal unemployment tax for contributions to State unemployment funds and an additional credit for reduction in such contributions under the experience rating laws of the States. The total credit is 90 percent of the Federal tax.

Since 1950, wages paid by a predecessor employer are deemed to be paid by its successor with respect to the calendar year in which the successor succeeded to the business. Ordinarily this entitled the successor to a credit against its Federal unemployment tax for State unemployment taxes paid by its predecessor or to the additional credit allowable to the predecessor. However, the 1950 amendment made no provision for allowing the 90 percent credit to the successor where the predecessor is regarded as employer for State unemployment tax purposes but not for Federal unemployment tax purposes. This comes about where the State has eliminated the 20-week requirement in its definition of employer for unemployment tax purposes and a merger, for example, occurs within the first 20 weeks of a calendar year. There are situations where the predecessor is required to pay a State unemployment tax for which no credit is allowed to anyone. This problem could arise in one of the 19 States which has abandoned the 20-week test in the definition of employer, or in one of the 27 States which has retained the 20-week test, but which alternatively determines liability for unemployment tax on the basis of employment experience in the current or preceding year. Those States are listed in the following tables:

TABLE I.—States which do not have a 20-week requirement in defining employer for unemployment tax purposes

Alaska	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Nevada	Rhode Island
Connecticut	New Mexico	Utah
District of Columbia	New York	Washington
Hawaii	Ohio	Wyoming
Idaho		

TABLE II.—States which have retained the 20-week test in defining employer for unemployment tax purposes, but which alternatively base liability for tax on the status as employer in the preceding year

Alabama	Kentucky	North Dakota
Arizona	Louisiana	Oklahoma
Delaware	Mississippi	South Carolina
Florida	Missouri	South Dakota
Georgia	Montana	Tennessee
Illinois	Nebraska	Texas
Indiana	New Hampshire	Virginia
Iowa	New Jersey	West Virginia
Kansas	North Carolina	Wisconsin

Where there is required to be paid into the State unemployment fund an amount which is not covered by the 90 percent credit, the employer is unjustly taxed by the Federal Government. The bill as passed by the House corrects this situation where there has been a statutory merger or consolidation of corporations in the first 20 weeks of a calendar year after 1950. However, the House bill did not take care of similar situations involving unincorporated businesses.

#### COMMITTEE AMENDMENT

Your committee approves the House bill but feels that the provision should apply to unincorporated businesses as well as corporations. Consequently, the committee offers an amendment which provides that where any employer acquires substantially all the property used in the trade or business, or in a separate unit of a trade or business, of another person and continues to employ some or all of the employees of the other person, the employer will be allowed both the credit for unemployment taxes paid to the State by such other person with respect to such employees and the additional credit, notwithstanding the fact that such other person was not an employer for purposes of the Federal unemployment tax.

#### EFFECTIVE DATE

Your committee has adopted the effective date in the bill as passed by the House. Thus, this amendment will apply to calendar years after 1950. Since the effective date provision does not refer to the period of limitations for claiming credit or refund, this provision will not permit refunds or credits where the calendar year involved is closed by the running of the statute of limitations.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### INTERNAL REVENUE CODE OF 1954

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#### CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

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#### SEC. 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 for the taxable year as provided in section 3304.

(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.

(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 for the taxable year as provided in section 3303 (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 the taxable year to any person having individuals in his employ, or to a rate of 2.7 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, and if any balance of such advance or advances has not been returned to the Federal unemployment account as provided in that title before December 1 of the taxable year, then the total credits (after other reductions under this section) otherwise allowable under this section for such taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) in the case of a taxable year beginning with the fourth consecutive January 1 on which such a balance of unreturned advances existed, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) in the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of unreturned advances existed, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

For purposes of this paragraph, wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

(d) *SUCCESSOR EMPLOYER.*—Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in a trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

