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UNEMPLOYMENT TAX CREDITS

SEPTEMBER 5, 1961.—Ordered to be printed

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

REPORT

[To accompany H.R. 2585]

The Committee on Finance, to whom was referred the bill (H.R. 2585) relating to the credits against the employment tax in the case of certain successor employers, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

I. SUMMARY OF HOUSE BILL

This bill is designed to prevent the imposition of a double tax in the case of the Federal and State unemployment taxes which arises because of a technical deficiency in the Federal tax laws. At the present time, due to a variation in the definition of employer between the Federal and State laws, cases can arise where the usual credit for State unemployment taxes is not available where a trade or business changes hands within the first 20 weeks of a calendar year. This bill corrects the faulty operation of the Federal laws by making the usual credit available in such cases.

Last year Congress passed a similar bill (H.R. 6482) but it was vetoed by the President. The President indicated that he favored the purpose of the legislation but was vetoing it because it was retroactive. The House passed this bill in the same form as last year's bill which was vetoed. Your committee originally amended the House bill to provide that the retroactive provisions would apply only in the case of statutory mergers and consolidations of corporations. This was done in an effort to meet some of the objection to the House bill. The bill was first reported in this form.

Subsequent to the reporting of the bill, however, the Internal Revenue Service determined that the problem for prior years,in the the case of statutory mergers and consolidations of corporations, could be handled administratively, under existing law, by revoking

certain provisions of old rulings. Because of this change in position your committee felt that there was no need for applying the bill retroactively.

Accordingly, the committee agreed to ask that the bill be recommitted for the purpose of eliminating its retroactive feature.

II COMMITTEE AMENDMENTS

The House-passed bill was effective for calendar year 1951 and subsequent years. Your committee's bill, as reported August 9, 1961 (S. Rept. 692, 87th Cong., 1st sess.), applied prospectively with respect to all business acquisitions, both corporate and noncorporate. It also applied to calendar year 1951 and subsequent years, but with respect only to statutory mergers and consolidations. Because the Treasury Department has now been able to administratively allow credit for prior years in cases of statutory mergers or consolidations, the bill was recommitted to the Committee on Finance on August 31, 1961, for the purpose of enabling the committee to eliminate the retroactive effect of the bill.

As the bill is now being reported it will apply prospectively only, and will apply to all business acquisitions, both corporate and noncorporate.

The committee also added to the bill an amendment which would provide that crushing and grinding are to be treated as mining processes in the case of clay and quartzite used in the manufacture of refractory products for open years beginning before January 1, 1961. This amendment would also provide that the value of the ground clay and quartzite shall be equal to 87½ percent of the average lowest price for which such clay is sold by the taxpayer during the taxable year.

III. GENERAL EXPLANATION OF UNEMPLOYMENT TAX AMENDMENT

Present law levies a Federal unemployment tax on employers of four or more, equal to 3.1 percent of the wages paid each employee up to a maximum of $3,000 per employee per calendar year. Credits of up to 2.7 percentage points out of this 3.1 percentage-point tax are allowed, however, for taxes paid to State unemployment funds. In addition, credits are allowed under an approved plan for unemployment taxes which would be paid to States if the employer did not have a good experience rating.

Since 1950, wages paid by a predecessor employer have been deemed to be paid by a successor with respect to the calendar year in which the successor succeeded to the business. Ordinarily this entitles the successor to a credit against its Federal unemployment tax for State unemployment taxes paid by its predecessor. However, the 1950 amendments have proved to be defective in certain respects and as a result the Federal Government does not always allow the credit to the successor where the predecessor has paid both the State and Federal unemployment tax. This problem can arise where a State and the Federal Government have different definitions of an employer.

The Internal Revenue Code defines an employer for purposes of the Federal unemployment tax as not including any person unless in 20 different calendar weeks the person employs at least four individuals. As a result, where one employer obtains the business of

another before the end of the first 20 weeks of the year, in either a tax-free or taxable transaction, the Treasury Department has held that this means that the first business making the wage payments was not an "employer" for purposes of the Federal unemployment tax. However, 19 States do not have the 20-week requirement in their laws for purposes of defining an "employer." In addition, 27 other States have retained the 20-week test but alternatively determine liability for the unemployment tax on the basis of employment experience in the preceding year. The States which do not have this 20-week test and those which have an alternative base under which liability for tax is determined on the basis of the status of the person as "employer" in the preceding year are shown in tables 1 and 2, respectively.

TABLE 1.—*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 2.—*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

In these 46 States where there is a different basis from that under the Federal law for determining who is the "employer," the Federal credit for the State unemployment tax does not work properly. Thus, where there is a successor business before the end of the 20th week during the calendar year, the Federal tax must be collected from the successor business which is the only "employer" for Federal tax purposes. However, in 46 States the State tax is to be collected from the first business, with little or no State tax due from the second business. As a result, almost a full State unemployment tax may be collected from the first business and a full Federal unemployment tax from the second business, but since these are considered to be different employers, little, if any, of the Federal credit for State taxes is allowable.

The problem described above can be illustrated by an example showing how the crediting of the Federal tax is intended to work in the usual case and how it may result in a double tax in the situations with which this bill is concerned. In the usual case, the Federal Government imposes a tax equal to 3.1 percent of the first $3,000 paid any employee by an employer but then allows a credit of 2.7 percent of these wages where a State unemployment tax is paid. Thus,

assuming at least $3,000 in wages, there is a $93 Federal tax but against this there is allowed an $81 credit, with the result that there is a net Federal tax in this case of $12 per employee. The State tax in this case may amount to as much as $81. If the business is transferred within the first 20 weeks of the year, however, quite a different result obtains. A State tax of up to $81 is paid by the first business. In addition, a full $93 Federal tax is imposed with respect to the second business. However, no credit against this Federal tax is available because of the technical difference as to which business is considered the initial "employer." As a result, instead of a combined Federal-State tax of up to $93 per employee, there may be a combined tax of $174 per employee.

Last year Congress recognized the unfairness of imposing a double tax in the type of situation described above and passed a bill (H.R. 6482) providing that where an employer acquired the business of another person and continued to employ part or all of the employees of this other person, the employer would be allowed the credit for the State unemployment taxes paid by the other person to the extent attributable to employees who went over with the business. This amendment was to apply to calendar years beginning on or after January 1, 1951, the effective date of the Social Security Amendments Act of 1950, which contained the defective language. However, this bill was vetoed by the President. In his message of June 3 (H. Doc. 411) he indicated that he vetoed this bill because—

> Strict avoidance of retroactive tax legislation, except in extraordinary and compelling circumstances not here in evidence, is essential to orderly tax administration, the Government's revenues, and the fair treatment of taxpayers.

Despite this veto, the President urged Congress at its earliest opportunity to enact new legislation without retroactive effect. In this connection he referred to the bill as having a desirable purpose which is thwarted under present law where a predecessor does not qualify as an "employer" for Federal tax purposes.

Your committee carefully reconsidered this bill and on the basis of such reconsideration the bill was originally reported to the Senate with an effective date, in the case of statutory consolidations and mergers, applicable to years beginning with the calendar year 1951. Your committee took this action because it believed that it was improper for the Federal Government to obtain a double tax in such situations, and that the Government would be unjustly enriched in the absence of legislation. Moreover, your committee felt that in case of statutory mergers or consolidations, the original employer, in effect, continued to exist under a new corporate structure.

Since the bill was reported, the Assistant Secretary of the Treasury informed the committee by letter dated August 30, 1961, that the Internal Revenue Service had determined that the successor corporation resulting from a statutory merger or consolidation is the same employer and taxpayer as the predecessor corporation within the meaning of the existing provisions of the Federal Unemployment Tax Act. The text of this letter is as follows:

TREASURY DEPARTMENT,
Washington, August 30, 1961.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On August 9, the Senate Finance Committee reported, with an amendment, H.R. 2585, relating to the credits against the employment tax in the case of certain successor employers. The amendment would apply the proposed successor employer rules retroactively to calendar years after 1950 in the case of statutory mergers and consolidations.

As noted in our report of August 9 on H.R. 2585, proponents of retroactive relief in the case of statutory mergers had presented certain legal arguments to the effect that the retroactive provision merely represented the correct interpretation of existing law. The report of the Committee on Finance also states that it was the belief of the committee that the retroactive provision was merely a clarification of existing law. On August 15, 1961, the Acting Chief Counsel of the Internal Revenue Service, after reconsideration of this legal issue, ruled that the successor corporation resulting from a statutory merger or consolidation is the same employer and taxpayer as the predecessor corporation within the meaning of the existing provisions of the Federal Unemployment Tax Act. On August 16, 1961, the Acting Commissioner of Internal Revenue expressed his agreement with this interpretation of existing law and also with the Chief Counsel's recommendation that prior rulings on this subject be modified accordingly. Consequently, the retroactive provision contained in the bill not only appears to be undesirable in principle but also is now unnecessary.

As we also noted in our report of August 9, the Internal Revenue Service, for administrative reasons, preferred a somewhat different technique for accomplishing the objectives of the bill on a prospective basis. However, the Service has informally advised us that the administrative problems involved in the present bill are not sufficiently great as to warrant modifying the bill at this time.

In view of the foregoing, the Treasury Department favors the enactment of H.R. 2585 if the unnecessary retroactive provision is deleted.

The Bureau of the Budget has advised the Treasury Department that there is no objection from the standpoint of the administration's program to the presentation of this report.

Sincerely yours,

STANLEY S. SURREY,
Assistant Secretary.

On the basis of this letter, it is the opinion of the committee that retroactive application of the amendment no longer is desirable. Accordingly, on August 31, 1961, the bill was recommitted to the committee and is now being reported on a prospective basis. As reported it will apply to all business acquisitions, both corporate and noncorporate which occur in calendar year 1961 and thereafter.

The bill does not change the definition of employer for purposes of the Federal unemployment tax. Instead, it provides for a credit (up to the usual maximum) where certain successor and precessor em-

ployers are involved. A new subsection (sec. 3302(c)) provides that where an employer acquired during the calendar year substantially all of the property used in the trade or business of another person (or used in a separate unit of a trade or business of such person) and immediately after the acquisition employs in his trade or business one or more individuals who just before the acquisition was employed by the predecessor, then the employer may credit against his Federal unemployment tax for the year involved an amount equal to the credits it could have otherwise obtained if the predecessor had been recognized as the employer for Federal tax purposes. This treatment is available only where the predecessor is not recognized as an employer for the individuals involved for the calendar year in which the acquisition takes place.

IV. ELECTION AS TO BASE FOR DETERMINING PERCENTAGE DEPLETION DEDUCTION IN THE CASE OF CLAY AND QUARTZITE USED IN MAKING REFRACTORY PRODUCTS

To determine the percentage depletion allowance under present law, it is necessary to multiply the percentage rate applicable to the particular mineral by the value of the mineral at the point at which the mining process ends. This point is referred to as the "cutoff point." In the case of clay and quartzite used in the production of refractory products, it has generally been the administrative practice of the Internal Revenue Service to treat crushing and grinding as mining processes and to establish the cutoff point at the conclusion of these processes. However, as a result of the Supreme Court decision in *U.S.* v. *Cannelton Sewer Pipe Co.*, 364 U.S. 76 (1960), the Government now contends that the cutoff point with respect to such clay and quartzite occurs when the minerals are extracted from the ground.

Your committee is of the opinion that, because of the past administrative practice of the Internal Revenue Service, taxpayers using clay and quartzite in the refractories industry should be given an election to use a cutoff point after crushing and grinding for taxable years beginning before January 1, 1961. Therefore, your committee has added an amendment to H.R. 2585 to provide such an election. No inferences should be drawn from this, however, as to the cutoff point for such clay or quartzite with respect to future years or with respect to past years if this election is not made.

Your committee's amendment also provides a method for valuing the clay or quartzite where the election is made. In past years in which the Internal Revenue Service generally allowed crushing and grinding as mining processes in the refractories industry, there was disagreement as to how the value of the clay and quartzite should be determined at this cutoff point. Taxpayers contended that the value of the ground minerals should be determined by reference to prices for which ground refractory clay and quartzite were sold for use as mortar. The Internal Revenue Service contended that since only small percentages of the minerals were sold for mortar, the mortar prices were not representative of the values for which ground refractory clay and quartzite could be sold generally. Therefore, the Service refused to accept these prices as determinative of the value at the cutoff point. Instead the Service sought to establish the value of the minerals in question by such methods as allocating the costs and

profits attributable to the finished products between the taxpayer's mining and manufacturing operations. Under these methods, the determinations of value were usually substantially lower than the prices used by taxpayers to determine value. Due to the disagreement as to the method of determining the value of the minerals at the cutoff point, few cases in the refractories industry were settled, and many taxpayers have open years back to 1951.

Because of this dispute on the question of value, your committee is of the opinion that any legislation adopted in this area should not only provide for the allowance of crushing and grinding as mining processes for the refractories industry for past years, but should also provide a method of determining the value at this cutoff point. Such legislation is desirable from the standpoint of both the taxpayers and the Government because in substantial measure it will resolve the depletion issue for refractory products for past years.

It is understood that, out of the cases that were settled in the refractories industry, at least one case was settled on the basis of the full mortar price, and several others were settled using values ranging from 71 to 87 percent of the mortar prices. In view of this range of settlements, your committee's amendment provides that, if the election is made, the taxpayer is to use a value of 87½ percent of the average lowest price for which he sold ground refractory clay or quartzite during the taxable year.

The election applies only to quartzite and clay used in the production of products generally recognized as refractory products by the refractories industry. This would include, for example, clay firebrick and special shapes, silica brick and shapes, refractory bonding mortars, etc. Furthermore, the election may be made only by a taxpayer who both mines the clay or quartzite and uses it in the production of refractory products.

If the election is made, crushing, grinding, and separation of the clay or quartzite from waste are to be treated as allowable mining processes. In determining the price to which the 87½ percent referred to above is to be applied, the average lowest published price or the average lowest selling price at which the crushed and ground products are sold during the year is to be used. From this, gross income from the property is determined by multiplying this price by the number of tons of clay or quartzite used in refractory products sold during the year. In determining the price at which the sales are made exceptional, unusual, or nominal sales are to be disregarded. Thus, for example, if a taxpayer made an accommodation sale during the taxable year at other than the regular price, this sale is not to be used for purposes of your committee's amendment.

It is intended that one price be used with respect to all of the taxpayer's clay used in refractory products sold during the taxable year, and similarly that one price be used with respect to quartzite. If there was a change in the lowest selling price for ground clay during the taxable year, the two or more prices will be averaged according to the number of days during the taxable year that each was in effect to determine the average lowest price. The amendment also provides that if the taxpayer makes no sales of ground clay or quartzite, he is to use the average lowest recognized price for such minerals in his marketing area published in a publication of the industry.

Under your committee's amendment, the election must be made by the taxpayer on or before 60 days after the date of publication of

final regulations under this provision. Once made, the election is irrevocable. The manner of making the election is to be prescribed by Treasury regulations.

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 are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

SEC. 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1961 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.1 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)) after December 31, 1938. In the case of wages paid during the calendar years 1962 and 1963, the rate of such tax shall be 3.5 percent in lieu of 3.1 percent.

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 before the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the 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 as of the beginning of which there is a balance of such advances, 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 as of the beginning of which there is a balance of such advances, 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.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this subsection) otherwise allowable under this section for the taxable year in the

case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 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

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 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;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit-cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

(d) DEFINITIONS AND SPECIAL RULES RELATING TO SUBSECTION (c).—

(1) RATE OF TAX DEEMED TO BE 3 PERCENT.—In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of 3.1 percent (or, in the case of the tax imposed with respect to the calendar years 1962 and 1963, in lieu of 3.5 percent).

(2) WAGES ATTRIBUTABLE TO A PARTICULAR STATE.—For purposes of subsection (c), 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.

(3) ADDITIONAL TAXES INAPPLICABLE WHERE ADVANCES ARE REPAID BEFORE NOVEMBER 10 OF TAXABLE YEAR.—Paragraph (2) or (3) of subsection (c) shall not apply with respect to any State

for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) AVERAGE EMPLOYER CONTRIBUTION RATE.—For purposes of subparagraphs (B) and (C) of subsection (c)(3), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(3), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-YEAR BENEFIT-COST RATE.—For purposes of subparagraph (C) of subsection (c)(3), the 5-year benefit-cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) ROUNDING.—If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(3) is not a multiple of 0.1 percent, it shall be rounded to the nearest multiple of 0.1 percent.

(7) DETERMINATION AND CERTIFICATION OF PERCENTAGES.—The percentage referred to in subsection (c)(3) (B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(8) CROSS REFERENCE.—

For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

(c) *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 the 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).

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