

C. EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX
CHAPTER 23. FEDERAL UNEMPLOYMENT TAX ACT

IRC Sec. 3309

Sec. 3309. State law coverage of services performed for nonprofit organizations or governmental entities.

(a) State law requirements. For purposes of section 3304(a)(6) [[26 USCS § 3304\(a\)\(6\)](#)]

-- (1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are--

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306(c) [[26 USCS § 3306\(c\)](#)], and

(B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c) [[26 USCS § 3306\(c\)](#)]; and

(2) the State law shall provide that a governmental entity, including an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

(b) Section not to apply to certain service. This section shall not apply to service performed--

(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3) [[26 USCS § 501\(c\)\(3\)](#)], and which is exempt from tax under section 501(a) [[26 USCS § 501\(a\)](#)];

(2) 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;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c) [[26 USCS § 3306\(c\)](#)], if such service is performed by an individual in the exercise of his duties--

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, or of an Indian tribe;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position which, under or pursuant to the State or tribal law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$ 1,000;

- (4) in a facility conducted for the purpose of carrying out a program of--
- (A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or
 - (B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;
- (5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; and
- (6) by an inmate of a custodial or penal institution.
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