

**35A-4-311 Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.**

- (1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:
  - (a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.
  - (b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.
  - (c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election shall be filed by January 31 of the year in which the termination is to be effective.
  - (d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions; the organization may not terminate such election for a period of two contribution years.
  - (e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.
  - (f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.
- (2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).
  - (a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.
  - (b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered

to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).

(c)

- (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.
  - (ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.
  - (iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.
  - (iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.
- (d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3)

- (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for that and the next contribution year.

(b)

- (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
  - (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:
    - (A) all contributions have been made timely; and
    - (B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
  - (iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:
    - (A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and
    - (B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.
- (4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs.

If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).

- (a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.
  - (b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.
- (5)
- (a) Two or more Indian tribe or tribal unit employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).
  - (b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.
  - (c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

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