WEST VIRGINIA CODE: §21A-5-3A

§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in section 501(c) (3) of the "U.S. Internal Revenue Code" which is exempt from income tax under section 501(a) of such code.

(1) Liability for contribution payments and election of reimbursement. -- Any nonprofit organization which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter on or after January 1, 1972, shall be liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects, in accordance with this subdivision (1), to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and of one half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972, provided it files with the commissioner a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this section, whichever occurs later.

(b) Any nonprofit organization which becomes subject to this chapter after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with subparagraph (a) or subparagraph (b) of this subdivision (1) will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

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(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(f) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election.

(2) Reimbursement payments. -- Payments in lieu of contributions shall be made in accordance with the provisions of this subdivision (2) including either subparagraph (a) or subparagraph (b) of this subdivision (2).

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one half of the amount of extended benefits paid during such quarter or other prescribed period which is attributable to service in the employ of such organization.

(b) Each nonprofit organization which has elected payments in lieu of contributions may request permission to make such payments as provided herein. Such method of payment shall become effective upon approval by the commissioner.

At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following: (i) For 1972, one percent of its total payroll for 1971; or (ii) for years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year; or (iii) for any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (c) of this subdivision (2). If the total payments exceed the

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amount so determined for the taxable year, all or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under subparagraph (a) or subparagraph (b) of this subdivision (2) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (e) of this subdivision (2).

(d) Payments made by any nonprofit organization under the provisions of this subdivision (2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner, setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the board of review, setting forth the grounds for the appeal.

(f) Past-due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to section seventeen of this article and the provisions of article ten of this chapter, apply to past-due contributions. Also, unpaid amounts in lieu of contributions are subject to the same assessment and civil action provisions of this chapter as apply to unpaid contributions. Further, the provisions of this chapter which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(3) Allocation of benefit costs. -- Each employer which is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one half of extended benefits paid which are attributable to service in the employ of such employer. 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 which is liable for such payments shall be determined in accordance with the provisions of subparagraph (a) or subparagraph (b) of this subdivision (3).

(a) Proportionate allocation (when fewer than all base period employers are liable for reimbursement). -- If benefits paid to an individual are based on wages paid by one or more employers which are liable for payments in lieu of contributions and on wages paid by one or

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more employers which are liable for contributions, the amount of benefits payable by each employer which is liable for payments in lieu of contributions shall be an amount which 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) Proportionate allocation (when all base period employers are liable for reimbursement). -- If benefits paid to an individual are based on wages paid by two or more employers which are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which 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.

(4) Group accounts. -- Two or more employers which have become liable for payments in lieu of contributions, in accordance with the provisions of this section, may file a joint application with the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision (4). Upon his approval of the application, the commissioner shall establish a group account for such employers effective as of the beginning of the calendar quarter in which he receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than three years and thereafter until terminated at the discretion of the commissioner or upon application by the group. 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 which bears the same ratio to the total benefits paid in such quarter which are attributable to service performed in the employ of all members of the group as to total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The commissioner shall prescribe such regulation as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts which are authorized by this subdivision (4), for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts which are payable under this subdivision (4) by members of the group and the time and manner of such payments.

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