WEST VIRGINIA CODE CHAPTER 21A ARTICLE 5

§21A-5-1. Employer coverage.

An employing unit which is or becomes an employer subject to this chapter during any year shall be subject to the provisions of the chapter for the whole of the year.

§21A-5-2. Termination of coverage.

Except as otherwise provided in section three of this article, an employing unit, with the exception of any employing unit for which service in employment is defined in subdivision (10), section sixteen, article one-a of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that within the preceding calendar year the employing unit did not pay wages of $1,500 or more in any calendar quarter for employment subject to this chapter and during that calendar year no service was performed for it with respect to which it was liable for any tax against which credit may be taken for contributions required to be paid into the unemployment compensation fund of this state; and any employing unit for which service in employment is defined in subdivision (10), section sixteen, article one-a of this chapter, shall cease to be an employer subject to this chapter only as of the first day of any calendar year and only if it files with the commissioner not later than January thirty-first of such year, a written application for termination of coverage, as of such first day of January, and the commissioner finds that there were no twenty different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit had four or more individuals in employment subject to this chapter: Provided, That the commissioner may for good cause extend the time for filing application for termination of coverage, effective as of the first day of the next succeeding quarter after the application is approved.

§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.

(a) An employing unit, not otherwise subject to the provisions of this chapter, which files with the commissioner its written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years, only if during January of such year it has filed with the commissioner a written notice to that effect.

(b) Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commissioner a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business are employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commissioner, such services are employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January first of any calendar year subsequent to such two calendar years, only if during January of such year such employing unit has filed with the commissioner a written notice to that effect.

(c) An employing unit which is or becomes an employer subject to this chapter within any calendar year is subject to this chapter during the whole of such calendar year.

(d) Any political subdivision of this state may elect to cover under this chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in sections twenty and twenty-one, article one-a of this chapter, operated by such political subdivision. Any such election of coverage is to be made by filing with the commissioner a notice of such election at least thirty days prior to the effective date of such election. Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in section three-a of this article. The provisions of section fifteen, article six of this chapter with respect to benefit rights based on service for state and nonprofit institutions of higher education are applicable also to service covered by an election under this subsection. The amounts required to be paid in lieu of contributions by any political subdivision under this subsection shall be billed and payment made as provided in section thirteen of this article with respect to similar payments by nonprofit organizations. An election under this subsection may be terminated, by filing with the commissioner written notice not later than thirty days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

§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.

(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 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 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.

§21A-5-3b. Financing benefits paid to employees of governmental entities; liability of governmental entities for payments.

Benefits paid to employees of governmental entities referred to in paragraph (B), subdivision (9), section sixteen, article one-a of this chapter, shall be financed in the same manner and in accordance with the provisions of section three-a, article five of this chapter; except that for extended benefits reimbursement shall be one hundred percent of the benefits paid.

Any governmental entity which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter, is liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects to make payments in lieu of contributions as set forth in section three-a.

Governmental entities electing to make payments in lieu of contributions are liable for the full amount of extended benefits paid for weeks of unemployment.

§21A-5-3c. Designating method of financing.

The Governor or any person or persons he may designate shall elect whether to finance unemployment compensation for the employees of this state or any of its agencies, bureaus, commissions, departments or other instrumentalities by choosing the contribution method or the reimbursement method. Nothing in this chapter shall be construed to require the state or any of its agencies, bureaus, commissions, departments or other instrumentalities to choose the same method of financing.

The county commission for each county or any of its agencies, bureaus, commissions, departments or other instrumentalities or the governing body for a municipality or any of its agencies, bureaus, commissions, departments or other instrumentalities shall elect whether to finance unemployment compensation liabilities by choosing the contribution method or the reimbursement method.

§21A-5-4. Required payments; failure to make required payments; criminal penalties.

(a) An employer is liable for payments in respect to wages paid for employment occurring during each year in which he or she is subject to this chapter.

(b) Any person, firm, partnership, company, corporation, or association who, as an employer, is subject to the provisions of this chapter, and who knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time periods specified by law, is guilty of an offense as follows:

(1) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a misdemeanor and:

(A) Upon a first conviction under this subdivision, shall be fined not less than $500 nor more than $1,000; or

(B) Upon a second conviction under this subdivision, shall be fined not less than $1,000 nor more than $5,000, imprisoned for not longer than thirty days or both fined and imprisoned.

(2) Any employer who, having been twice convicted of the offense specified in subdivision (1) of this subsection, knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(3) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for four calendar quarters, which quarters need not be consecutive but are within thirty six quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(c) In charging a person with a second or subsequent offense under the provisions of paragraph (B), subdivision (1), subsection (b) of this section or under subdivision (2), subsection (b) of this section, the warrant, indictment or information must set forth the date and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense unless the conviction for the previous offense has become final and unless a prior offense occurred within the ten year period next preceding the second or subsequent offense. The venue for prosecution of any violation of this subsection is either

the county in which the defendant's principal business operations are located or in Kanawha County where the fund is located.

§21A-5-4a. Voluntary payments.

An employer may make voluntary payments under such regulations as the commissioner may prescribe, in addition to the required payments, and such voluntary payments shall be credited to the employer's account in the same manner and under the same conditions as the required payments. Any payment so made shall not be considered a prepayment of any future payment required nor can such payment be refunded under any condition.

§21A-5-5. Rate of contribution.

On or after January 1, 1941, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year 1941, subject, however, to other provisions of this article; except that on and after January 1, 1972, each employer subject to this chapter shall pay contributions at the rate of one and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

On and after July 1, 1981, each employer subject to this chapter shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

Notwithstanding any other provision of this chapter to the contrary, on or after July 1, 1981, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of seven and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

§21A-5-6. Payments to be pooled in fund.

All payments shall be made to the unemployment compensation fund. All payments to the fund shall be pooled and available to pay benefits to any individual entitled thereto under this chapter, irrespective of the source of the payment. Nothing in this chapter shall be construed to grant to an employer or individual in his service prior claim or right to the amount paid by him to the unemployment compensation fund.

§21A-5-7. Joint and separate accounts.

(1) The commissioner shall maintain a separate account for each employer, and shall credit the employer's account with all contributions of the employer in excess of four tenths of one percent of taxable wages: Provided, That any adjustment made in any employer's account after the computation date may not be used in the computation of the balance of an employer until the next following computation date: Provided, however, That nothing in this chapter grants an employer or individual in his, her or its service prior claims or rights to the amounts paid by him, her or its into the fund, either on his, her or its behalf or on behalf of the individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he or she has been employed as much as thirty working days, whether or not the days are consecutive: Provided, That no employer's account may be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he or she was employed as much as thirty days, whether or not the days are consecutive: Provided, however, That no employer's account may be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. Benefits paid to an individual are to be charged to the accounts of his or her employers in the base period, the amount of the charges, chargeable to the account of each employer, to be that portion of the total benefits paid the individual as the wages paid him or her by the employer in the base period are to the total wages paid him or her during his or her base period for insured work by all his or her employers in the base period. For the purposes of this section, no base period employer's account may be charged for benefits paid under this chapter to a former employee, if the base period employer furnishes separation information within fourteen days from the date the notice was mailed or delivered, which results in a disqualification under the provision set forth in subsection one, section three, article six, or subsection two, section three, article six of this chapter or would have resulted in a disqualification under that subsection except for a subsequent period of covered employment by another employing unit. Further, no contributory base period employer's experience rating account may be charged for benefits paid under this chapter to an individual who has been continuously employed by that employer on a part-time basis, if the part-time employment continues while the individual is separated from other employment and is otherwise eligible for benefits. One half of extended benefits paid to an individual are to be charged to the accounts of his or her employers, except state and local government employers, in the base period in the same manner provided for the charging of regular benefits. The entire state share of extended benefits paid to an individual shall be charged to the accounts of his or her base period employers. The provisions of this section permitting the noncharging of contributory employers' accounts have no application to benefit charges imposed upon reimbursable employers.

(3) The commissioner shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing the contribution rates as will reflect such experiences. For the purpose of fixing the contribution rates for each calendar year, the books of the department shall be closed on July 31 of the preceding calendar year, and any contributions paid after that, as well as benefits paid after that with respect to compensable weeks ending on or before June 30 of the preceding calendar year, may not be taken into account until the next annual date for fixing contribution rates: Provided, That if an employer has failed to furnish to the commissioner on or before July 31 of the preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, the employer's rate shall be, if it is immediately prior to that July 31, less than three and three-tenths percent, increased to three and three-tenths percent: Provided, however, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for the payment or reporting of information granted pursuant to a rule of the commissioner authorizing an extension, shall be taken into account for the purposes of fixing contribution rates: Provided further, That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date is the next succeeding business day: And provided further, That whenever, through mistake or inadvertence, erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January 1 of the calendar year in which the mistake or inadvertence is discovered, but payments, made under any rate assigned prior to January 1 of that year, are not erroneously collected.

(4) The commissioner may prescribe rules for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with the rules and upon application by two or more employers to establish a joint account, or to merge their several individual accounts in a joint account, maintain a joint account as if it is a single employer's account.

(5) State and local government employers may enter into joint accounts and to maintain the joint account or accounts as if it or they are a single employer's account or accounts.

(6) Effective on and after July 1, 2012 if an employer has failed to furnish to the commissioner on or before August 31 of each year the wage information for all past periods necessary for the computation of the contribution rate, the employer's rate shall be, if it is immediately prior to July 1, less than seven and five-tenths percent, increased to seven and five-tenths percent.

(7) Effective July 1, 2012, a contributory employer's account shall not be relieved of charges relating to a payment from the Fund if the department determines that:

(A) The erroneous payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation; and

(B) The employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(8) For purposes of this section:

(A) "Erroneous payment" means a payment that but for the failure by the employer or the employer's agent with respect to the claim for unemployment compensation would not have been made.

(B) "Pattern of failing" means repeated documented failure on the part of the employer or the agent of the employer to respond as requested in this section, taking into consideration the number of instances of failure in relation to the total volume of requests by the agency to the employer or the employer's agent as described in this section.

§21A-5-8.

Repealed.

Acts, 1937 Reg. Sess., Ch. 100.

§21A-5-9.

Repealed.

Acts, 1981 Reg. Sess., Ch. 206.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

(a) On and after July 1, 1981, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

TABLE II

Col. A Col. B Col. C Col. D Col. E Col. F

Percentage of

Average

Annual Payroll

By Which

Credits Ex Employer's

Rate -ceed

Class Charges Rate

(1) 0.0 to 6.0 4.5 3.5 2.5 1.5

(2) 6.0 4.1 3.1 2.1 1.1

(3) 7.0 3.9 2.9 1.9 0.9

(4) 8.0 3.7 2.7 1.7 0.7

(5) 9.0 3.5 2.5 1.5 0.5

(6) 10.0 3.3 2.3 1.3 0.3

(7) 10.5 3.1 2.1 1.1 0.1

(8) 11.0 2.9 1.9 0.9 0.0

(9) 11.5 2.7 1.7 0.7 0.0

(10) 12.0 2.5 1.5 0.5 0.0

(11) 12.5 2.3 1.3 0.3 0.0

(12) 13.0 2.1 1.1 0.1 0.0

(13) 14.0 1.9 0.9 0.0 0.0

(14) 16.0 1.7 0.7 0.0 0.0

(15) 18.0 and over 1.5 0.5 0.0 0.0

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June 30, 1967, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June 30, 1984, the noncredited contribution identified in section seven of this article shall not be added to the employer's debit balance to determine the employer contribution rate.

Effective on and after the computation date of June 30, 1967, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment; except that effective on and after July 1, 1981, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five

percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July 1, 1981, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June 30, 1967, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July 1, 1981, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year.

"Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(b) Notwithstanding any other provision of this section, every debit balance employer subject to the provisions of this chapter, and any foreign corporation or business entity engaged in the construction trades which has not been an employer in the State of West Virginia for thirty-six consecutive months ending on the computation date, shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment.

(c) Effective June 30, 1985, and each computation date thereafter, the reserve balance of a debit balance employer shall be reduced to fifteen percent if such balance exceeds fifteen percent. The amount of noncredited tax shall be reduced by an amount equal to the eliminated charges. If the eliminated charges exceed the amount of noncredited tax, the

noncredited tax shall be reduced to zero.

(d) On and after January 1, 19991, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits; and

(2) The payments credited to the account for all past years exceed the benefits charged to the account by an amount equal to at least the percent of the average annual payroll as shown in Column B of Table III. The rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed one and seventy-five one-hundredths percent but are less than two and twenty-five one-hundredths percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column D of Table III on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed two and twenty-five one-hundredths percent but are less than two and seventy-five one-hundredths percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column E of Table III on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed two and seventy-five one-hundredths percent but are less than three percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column F of Table III on line with the percentage in Column B.

When the total assets of the fund as of January 1, of a calendar year equal or exceed three percent of gross covered wages for the twelve-month period ending on June 30 of the preceding year, an employer's rate shall be the amount appearing in Column G of Table III on line with the percentage in Column B.

TABLE III

Col. A Col. B Col. C Col. D Col. E Col. F Col. G

Percentage of

Average

Annual Payroll

Rate Class	By Which Credits Exceed Charges	Employer's Rate			
(1)	0.0 to 6.0	4.5	4.0	3.5	3.0	2.0
(2)	6.0	4.1	3.6	3.1	2.6	1.6
(3)	7.0	3.9	3.4	2.9	2.4	1.4
(4)	8.0	3.7	3.2	2.7	2.2	1.2
(5)	9.0	3.5	3.0	2.5	2.0	1.0
(6)	10.0	3.3	2.8	2.3	1.8	0.8
(7)	10.5	3.1	2.6	2.1	1.6	0.6
(8)	11.0	2.9	2.4	1.9	1.4	0.4
(9)	11.5	2.7	2.2	1.7	1.2	0.2
(10)	12.0	2.5	2.0	1.5	1.0	0.0
(11)	12.5	2.3	1.8	1.3	0.8	0.0
(12)	13.0	2.1	1.6	1.1	0.6	0.0
(13)	14.0	1.9	1.4	0.9	0.4	0.0
(14)	16.0	1.7	1.2	0.7	0.2	0.0
(15)1	8.0 and over	1.5	1.0	0.5	0.0	0.0

(e) Notwithstanding any other provision of this section, all employers' rates for the calendar year beginning January 1, 1990, and ending on December 31, 1990, shall be the amount in Column D of Table II on line with the percentage in Column B.

§21A-5-10a. Optional assessments on employers and employees.

(a) On and after July 1, 1987, if the commissioner determines for a given projected quarter that the rates established under the provisions of section ten of this article will not result in payments being made to the unemployment compensation fund in an amount sufficient to finance the payment of benefits during such quarter, the commissioner shall certify such fact to the Governor, and the Governor shall, by executive order, direct the commissioner to establish a level of assessment for employees and employers in accordance with the provisions of this section which is sufficient to prevent, to the extent possible, a deficit in the funds available to pay benefits to eligible individuals.

(b) Pursuant to such executive order, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed fifteen one hundredths (15/100) of one percent of an employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (c) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the Bureau of Employment Programs on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set forth in section seventeen, article five, chapter twenty-one-a of this code.

(c) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to prevent a deficit which would otherwise result from the payment of benefits to eligible individuals, subject only to the limitation established in the preceding subsection (b) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages as defined in section three, article one of this chapter, and which is sufficient to cause the total statewide assessment on such employers to equal the total statewide assessment imposed upon employees.

Notwithstanding any other provision of this section to the contrary, the solvency assessments on employers and employees established by this section hereby terminate on April 1, 1990.

§21A-5-10b. Transfer of business.

If a subject employer transfers his or her entire organization, trade or business, or substantially all the assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his or her business, including the portion acquired by the transfer, through the following thirty-first day of December. If a subject employer makes such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate continues as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer transfers his or her entire organization, trade or business, or substantially all the assets thereof, to two or more employers or employing units, apportionment of the contribution records and benefit experience records of the transferring employer shall be made between the acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer continues as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer continues as his or her or its rate until the next effective rate date. For the succeeding calendar year the rate of each transferee shall be determined as provided in section ten of this article. As to any transfers which occur prior to the thirty-first day of July of the current calendar year such rate remains effective for the balance of that calendar year: Provided, That if the transfers occur subsequent to the thirty-first day of July such rate remains effective for the balance of that calendar year and the rate for the succeeding calendar year shall, notwithstanding anything to the contrary provided in section seven of this article, be recomputed on the basis of the combined experience of the transferring employers as of the thirty-first day of July of the year in which the transfers occur. In case the transferring employer is delinquent in the payment of contributions or interest thereon the acquiring employer is not entitled to any benefit of the contribution record of the transferring employer unless payment of such delinquent contributions and interest thereon is assumed by the acquiring employer. The commissioner shall upon joint request of the transferor and transferee furnish the transferee a statement of the amount of any contribution and interest due and unpaid by the transferor. A statement so furnished is controlling for the purposes of the foregoing proviso.

The provisions of this section do not apply to any employer which is established through the assistance of any state economic development agency irrespective of the contribution rate of any related predecessor.

A reorganized employer keeps the contribution rate of the employing unit before the

reorganization until December 31, immediately following the date of reorganization and is liable for all contributions, interest and penalties owed by the employing unit. Effective with January 1, of the calendar year immediately following reorganization, a reorganized employer will have his or her contribution rate based on all of his or her experience with the fund in accordance with section ten of this article. If the predecessor does not remain in business after the transfer of all or part of the assets, business, organization, or trade of the predecessor employer: (1) The successor employer is liable for all contributions, interest and penalties owed by the predecessor employer at the time of the transfer; and (2) if two or more successor employers receive the transfer, the successor employers are liable in the same proportion as the assets of the unit being transferred is to the total assets of the predecessor employer.

§21A-5-10c. Special rules regarding transfers of experience and assignment of rates.

Notwithstanding any other provision of law to the contrary, the following shall apply regarding assignment of rates and transfers of experience:

(a) (1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as a result of such transfer, the transferring employer no longer performs the trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(2) If, following a transfer of experience under paragraph (1) of this section, the Commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer, as defined in section fifteen, article one-a of this chapter, at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the Commissioner or his or her representative finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the applicable new employer rate under section five of this article. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commissioner or his or her representative shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c) (1) If a person knowingly violates or attempts to violate subsection (a) or (b) of this section or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the person's business is already at the highest rate for any year, or if the amount of increase

in the person's rate would be less than two percent for that year, then a penalty rate of contributions of two percent of taxable wages shall be imposed for that year.

(B) If the person is not an employer, that person shall be subject to a civil money penalty of not more than $5,000. Any fine collected pursuant to this paragraph shall be deposited in the Special Administrative Fund Account established under section five-a, article nine of this chapter.

(2) For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(4) In addition to the penalty imposed by paragraph (1) of this subsection, any violation of this chapter may be prosecuted as a misdemeanor under section ten, article ten of this chapter.

(d) The Commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) For purposes of this section:

(1) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986; and

(2) "Trade or business" shall include the employer's workforce.

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor in effect at the time this section becomes law.

§21A-5-11.

Repealed.

Acts, 1941 Reg. Sess., Ch. 97.

§21A-5-12.

Repealed.

Acts, 1943 Reg. Sess., Ch. 76.

§21A-5-13. Method of payment.

All payments shall be made in accordance with rules and regulations of the commissioner.

§21A-5-14. Deduction of payments from wages prohibited.

An employer shall not deduct payments in whole or in part from the wages of an individual in his employ.

§21A-5-15. Fractions of cents.

In any payment, a fractional part of a cent shall be disregarded unless it amount to one-half cent or more, in which case, it shall be increased to 1¢.

§21A-5-16. Collection of payments.

(a) The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment, interest or penalty thereon required by this chapter. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions except petitions for judicial review under article seven of this chapter and cases arising under the workers' compensation law. Upon prevailing in any such civil action, the commissioner is entitled to recover attorneys' fees and costs of action from the employer.

(b) Any payment, interest and penalty thereon due and unpaid under this chapter is a debt due the state in favor of the commissioner. It is a personal obligation of the employer immediately due and owing and is, in addition thereto, a lien that may be enforced as other judgment liens are enforced through the provisions of chapter thirty-eight of this code and the same shall be deemed by the circuit court to be a judgment lien for this purpose against all the property of the employer: Provided, That no such lien is enforceable as against a purchaser (including lien creditor) of real estate or personal property for a valuable consideration, without notice, unless docketed as provided in article ten-c, chapter thirty-eight of this code.

(c) In addition to all other civil remedies prescribed herein the commissioner may in the name of the state, after giving appropriate notice as required by due process, distrain upon any personal property, including intangibles, of any employer delinquent for any payment, interest and penalty thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, he or she may likewise distrain in the name of the state before such delinquency occurs. For purposes of effecting a distraint under this subsection, the commissioner may require the services of a sheriff of any county in the state in levying distress in the county in which the sheriff is an officer and in which the employer's personal property is situated. A sheriff so collecting any payments, interest and penalties thereon is entitled to compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commissioner is entitled to recover his or her attorney fees and costs of action from the employer.

(d) In case a business subject to the payments, interest and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provision, so far as the assets in administration will permit, for the regular payment of such payments as the same become due.

(e) The Secretary of State of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state,

until notified by the commissioner that all payments, interest and penalties thereon against any such corporation which is an employer under this chapter have been paid or that provision satisfactory to the commissioner has been made for payment.

(f) In any case where an employer defaults in payments, interest or penalties thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains delinquent after due notice, the commissioner may bring action in the circuit court of Kanawha County to enjoin that employer from continuing to carry on the business in which such liability was incurred: Provided, That the commissioner may as an alternative to this action require such delinquent employer to file a bond in the form prescribed by the commissioner with satisfactory surety in an amount not less than fifty percent more than the payments, interest and penalties due.

(g) Amounts of payments and penalties collected under this section shall be deposited to the credit of the unemployment compensation trust fund. Amounts of interest, attorneys' fees and costs collected under this section shall be paid into the employment security special administration fund. Any such amounts are not to be treated by the Auditor or treasurer as part of the general revenue of the state.

§21A-5-17. Interest and rate on past-due payments; penalties for late payment and reporting.

(a) Payments, including penalties, unpaid on the date on which due and payable, as prescribed by the commissioner, shall bear interest at the rate of one percent per month until payment plus accrued interest is received by the commissioner. Interest shall be compounded quarterly until payment plus accrued interest is received by the commissioner.

Interest collected pursuant to this section shall be paid into the employment security special administration fund.

(b) Each employer who fails to timely pay, in whole or in part, the contribution due with any report for any quarter commencing on and after July 1, 1996, shall pay a late payment penalty of the greater of $50 or ten percent of the contribution due, but not to exceed $500. Such late penalty is due immediately along with the payment of the outstanding amount of contribution. Penalties collected pursuant to this section shall be paid into the unemployment compensation trust fund.

§21A-5-17a. Summary assessments.

(1) If an employer fails to file reports for the purpose of determining the amount of contribution in accordance with the regulations of the commissioner, or files manifestly incorrect or insufficient reports, the commissioner may assess the contribution and any interest due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of such assessment to such employer: Provided, That such assessment shall be subject to redetermination by the commissioner upon the filing by the employer of correct and sufficient reports within thirty days after notice of such assessment shall be given to him

(2) If the commissioner determines that the collection of any contribution or interest under the provisions of this chapter are (is) or may be jeopardized by delay, he may, whether or not the time prescribed by this chapter or any regulations issued pursuant thereto for making reports and paying contributions has expired, immediately assess such contribution, together with interest, then due or estimated by him to be due, and shall give written notice of such assessment to the employer: Provided, That such assessment, unless based on information submitted by the employer, shall be subject to redetermination upon the same condition and in the same manner as provided in subsection (1) hereof.

(3) Any such assessment may be enforced in the manner provided in section sixteen hereof.

§21A-5-17b. Comity in collection of past-due payments and overpayments.

The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commissioner in the name of this state is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the commissioner of the Bureau of Employment Programs of this state may through his legal assistant or assistants institute and conduct such suit for such other state.

Notwithstanding any other provisions of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this state or another state law or under an unemployment benefit program of the United States.

§21A-5-17c. Service of process on nonresident employer.

If an employer is not a resident of West Virginia, was a resident but has left the State of West Virginia or is a corporation not authorized to do business in this state and for which employer services are performed in insured work within the State of West Virginia and liability for payment of unemployment compensation contributions is due and payable to this state under the provisions of the West Virginia unemployment compensation law, such employer shall be deemed to appoint the Secretary of State of West Virginia, or his successor in office, to be the employer's true and lawful attorney upon whom may be served all lawful process in any action or any proceeding for all purposes under this chapter and when served as hereinafter provided such service shall have the same force, effect and validity as if said nonresident employer were personally served with summons and complaint in this state.

Service shall be made by leaving the original and two copies of both the summons and complaint, and the fee required by section two, article one, chapter fifty-nine of this code, with the Secretary of State, or in his office, and said service shall be sufficient upon said nonresident. In the event any such summons and complaint is so served on the Secretary of State he shall immediately cause one of the copies of the summons and complaint to be sent by registered or certified mail, return receipt requested, to the employer at the latter's last known or reasonably ascertainable address. The employer's return receipt or, if such registered or certified mail is returned to the Secretary of State refused by the addressee or for any other reason is undelivered, such mail showing thereon the stamp of the post-office department that delivery has been refused, or other reason for nondelivery, shall be appended to the original summons and complaint, and filed by the Secretary of State in the clerk's office of the court from which said process issued.

§21A-5-18. Priorities.

(1) In the event of any distribution of an employer's assets pursuant to an order of the court under a law of this state, payments then or thereafter due and interest allowable thereon shall be paid in full prior to all other claims except taxes and claims for wages. Wage claims in excess of $250 per claimant or earned more than six months before the commencement of the proceeding, shall not be entitled to priority.

(2) In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of one thousand eight hundred ninety-eight, as amended, claims for payments then or thereafter due and interest thereon, which have not been reduced to lien, shall be entitled to such priority as is provided in said bankruptcy act for taxes due any state of the United States.

§21A-5-19. Refunds.

Within two years after the date on which payment of contribution, or interest thereon, is made, an employer, who has paid such payment or interest, may make application for:

(1) An adjustment thereof in connection with subsequent payments.

(2) A refund thereof if adjustment cannot be made.

If the commissioner determines that payments and interest were erroneously collected, he shall make the adjustment, without interest, in connection with subsequent payments of the employer, or if such adjustment cannot be made, refund the amount of the payments erroneously collected, without interest, from the clearing account of the unemployment compensation fund, and the amount of the interest erroneously collected, from the employment security special administration fund.

For like cause and within the same period the commissioner, on his own initiative, may make an adjustment or refund: Provided, That nothing in this chapter shall be construed as permitting a cash refund of any contribution required under the law in effect when such contribution became due.

§21A-5-20. Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services.

Wages for insured work includes wages paid for previously uncovered service. For the purposes of this section, the term "previously uncovered services" means services:

(1) Which were not employment as defined in section sixteen, article one-a of this chapter, or by election pursuant to section three, article five of this chapter, at any time during the one-year period ending December 31, 1975; and

(2) Which (A) Are agricultural labor, or domestic services as defined in subdivisions (12) and (13), section sixteen, article one-a of this chapter or (B) are services performed by an employee of this state or a political subdivision thereof, or a nonprofit educational institution as provided in paragraphs (B) and (C), subdivision (9), section sixteen, article one-a of this chapter; except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.