

**871—23.31 (96) Transfer of segregable portion of an enterprise or business.****23.31(1) Application and required information.**

*a.* The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

- (1) Files with the department a written application, on Form 60-0126, Report to Determine Liability, or in letter form, within 90 days after the date of purchase;
- (2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and
- (3) Continues to operate the acquired portion of the business.

*b.* Necessary information establishing the separate identity of the account includes but is not limited to:

- (1) Written agreement to the transfer by the predecessor. The predecessor's signature on Forms 68-0068 and 68-0065, The Report of Employer on Transfer of One of Two or More Employing Units, will be sufficient. (See 23.31(1) "b"(4), (5));
- (2) Date of acquisition of the segregable portion;
- (3) Date of commencement of the segregable portion by the predecessor;
- (4) Report showing the names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred. (Form 68-0065, The Report of Employer on Transfer of One of Two or More Employing Units.)
- (5) Report showing the predecessor and successor name, address, account numbers, information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition. (Form 68-0068, The Report of Employer on Transfer of One of Two or More Employing Units.)

*c.* It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn in writing at any time prior to the department mailing notice that the transfer has been approved.

*d.* It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn in writing at any time prior to the department mailing notice that the transfer has been approved.

**23.31(2) Portion of reserve and payroll transferred.** When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

*a.* If the predecessor's account has been in existence less than five years prior to the acquisition or purchase date (or more than five years when records are available), the information necessary to calculate future rates will be transferred; or

*b.* If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years,

(1) The actual taxable wages, and benefit charges attributable to the acquired portion for the five-year period immediately preceding the date of acquisition shall be transferred, plus

(2) That portion of the predecessor's benefit charges for the period commencing with the beginning date of the predecessor's account and ending five years prior to the acquisition date equal to the ratio of the taxable wages attributable to the acquired portion for the 12 completed calendar quarters immediately preceding the acquisition date to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion (as supplied on Form 68-0065);

or

*c.* If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records (as supplied on Form 68-0065) attributable to the acquired portion shall be transferred; or

*d.* In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

**23.31(3)** *Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.* The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

**23.31(4)** *Notification of approval or denial of transfer and appeals.*

*a.* Upon receipt of application (see subrule 23.31(1)) and accompanying information as required, the department shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year.

*b.* If the department finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be deemed to have been solely or primarily for such purpose if the department finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

*c.* Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 23.52(96) to 23.56(96).

**23.31(5)** *Liability of successor for contribution.* Any individual or organization, whether or not an employing unit, which in any manner acquires the organization, trade or business or substantially all of the assets thereof, and is held to be a successor, shall be liable for the payment of contribution, interest and penalty, due or accrued and unpaid by such predecessor employer, at the time of acquisition or purchase, if the department concludes that such contributions cannot be collected from the predecessor on the portion of such organization, trade or business acquired by the successor.

This rule is intended to implement Iowa Code section 96.7(3).