

Substituted for SF 2247
3/12/96 (p. 730)

FEB 15 1996
Place On Calendar

HOUSE FILE 2229
BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HSB 547)

Passed House, Date 3/5/96 (p. 528) Passed Senate, Date 3/26/96 (p. 1052)
Vote: Ayes 96 Nays 0 Vote: Ayes 49 Nays 0

(p. 1346) Re Passed Hsc Approved 4-17-96
95-0 4/11/96

A BILL FOR

1 An Act relating to unemployment insurance benefits by providing
2 for employer contributions and liability for benefits
3 regarding successor employers.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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600044

1 Section 1. Section 96.7, subsection 2, paragraph e, Code
2 Supplement 1995, is amended to read as follows:

3 e. The division shall fix the contribution rate for each
4 employer and notify the employer of the rate by regular mail
5 to the last known address of the employer. An employer may
6 appeal to the division for a revision of the contribution rate
7 within thirty days from the date of the notice to the
8 employer. After providing an opportunity for a hearing, the
9 division may affirm, set aside, or modify its former
10 determination and may grant the employer a new contribution
11 rate. The division shall notify the employer of its decision
12 by regular mail. Judicial review of action of the division
13 may be sought pursuant to chapter 17A.

14 If an employer's account has been charged with benefits as
15 the result of a decision allowing benefits and the decision is
16 reversed, the employer may appeal, within thirty days from the
17 date of the next contribution rate notice, for a recomputation
18 of the rate. If contributions become due at a disputed
19 contribution rate prior to the employer receiving a decision
20 reversing benefits, the employer shall pay the contributions
21 at the disputed rate but shall be eligible for a refund
22 pursuant to section 96.14, subsection 5. If a base period
23 employer's account has been charged with benefits paid to an
24 employee at a time when the employee was employed by the base
25 period employer in the same employment as in the base period,
26 the employer may appeal, within thirty days from the date of
27 the first notice of the employer's contribution rate which is
28 based on the charges, for a recomputation of the rate.

29 Sec. 2. Section 96.7, subsection 7, paragraph e, Code
30 Supplement 1995, is amended to read as follows:

31 e. If an entire enterprise or business of a
32 reimbursable government governmental entity is sold or
33 otherwise transferred to a subsequent employing unit and the
34 successor acquiring employing unit continues to operate the
35 enterprise or business, the successor acquiring employing unit

1 shall assume the position of the reimbursable government
2 governmental entity with respect to the reimbursable
3 government governmental entity's liability to pay the division
4 for reimbursable benefits based on the governmental entity's
5 payroll and-reimbursable-benefits to the same extent as if no
6 change in the ownership or control of the enterprise or
7 business had occurred, whether or not the successor-employer
8 acquiring employing unit elected or elects, or was or is
9 eligible to elect, to become a reimbursable employer with
10 respect to the employer's acquiring employing unit's own
11 payroll prior to or after the sale-or-transfer acquisition of
12 the governmental entity's enterprise or business.

13 Sec. 3. Section 96.7, subsection 8, paragraph b,
14 subparagraph (6), Code Supplement 1995, is amended to read as
15 follows:

16 (6) If an the entire enterprise or business of a
17 reimbursable nonprofit organization is sold or otherwise
18 transferred to a subsequent employing unit and the successor
19 acquiring employing unit continues to operate the enterprise
20 or business, the successor acquiring employing unit shall
21 assume the position of the reimbursable nonprofit organization
22 with respect to the nonprofit organization's liability to pay
23 the division for reimbursable benefits based on the nonprofit
24 organization's payroll and-reimbursable-benefits to the same
25 extent as if no change in the ownership or control of the
26 enterprise or business had occurred, whether or not the
27 successor-employer acquiring employing unit elected or elects,
28 or was or is eligible to elect, to become a reimbursable
29 employer with respect to the employer's acquiring employing
30 unit's own payroll prior to or after the sale-or-transfer
31 acquisition of the nonprofit organization's enterprise or
32 business.

33 Sec. 4. Section 96.14, subsection 5, Code 1995, is amended
34 to read as follows:

35 5. REFUNDS, COMPROMISES AND SETTLEMENTS. If the division

1 of job service finds that an employer has paid contributions,
2 ~~or~~ interest on contributions, or penalties, which have been
3 erroneously paid or which-have-been-paid if the employer has
4 overpaid contributions because the employer's contribution
5 rate was subsequently reduced pursuant to section 96.7,
6 subsection 2, paragraph "e", solely due to benefits initially
7 charged against but later removed from an employer's account,
8 and the employer has filed an application for adjustment
9 refund, the division shall ~~make-an-adjustment, compromise, or~~
10 ~~settlement, and, at the employer's option, shall either refund~~
11 ~~the payments or treat the payments as voluntary contributions~~
12 ~~with no limitation on the payments' effects on the employer's~~
13 ~~contribution rate~~ refund the erroneous payment or overpayment.
14 Refunds so made shall be charged to the fund to which the
15 collections have been credited, and shall be paid to the
16 ~~claimant~~ employer without interest. A claim for refund shall
17 be made within three years from the date of payment. For like
18 cause, adjustments refunds, compromises, or-refunds and
19 settlements may be made by the division on its own initiative
20 within three years of the date of the payment or assessment.
21 If the division finds that the contribution that has been
22 assessed against an employer is of doubtful collectibility or
23 may not be collected in full, the division may institute a
24 proceeding in the district court in the county in which the
25 employer against which the tax is levied is located,
26 requesting authority to compromise the contribution. Notice
27 of the filing of an application shall be given to the
28 interested parties as the court may prescribe. The court upon
29 hearing may authorize the division to compromise and settle
30 its claim for the contribution and shall fix the amount to be
31 received by the division in full settlement of the claim and
32 shall authorize the release of the division's lien for the
33 contribution.

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EXPLANATION

35

Section 1 of the bill provides that the division of job

1 service send contribution rate notices to employers by regular
2 mail at the employer's last known address. The section also
3 provides that the employer shall pay contributions at a
4 disputed rate prior to a decision concerning the rate but that
5 the employer is eligible for a refund pending a decision
6 reversing benefits. Sections 1 and 4 also add language
7 providing that the two Code sections dealing with employer
8 contribution rates and refunds both refer to the other
9 section.

10 Sections 2 and 3 change language concerning what occurs
11 when governmental or nonprofit reimbursable employers sell
12 their entire business. The bill changes "government" to
13 "governmental" and "successor employer" to "acquiring
14 employing unit".

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HOUSE FILE 2229

S-5518

1 Amend House File 2229, as passed by the House, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Sec. ____ . Section 96.3, Code Supplement 1995, is
6 amended by adding the following new subsection:

7 NEW SUBSECTION. 10. VOLUNTARY INCOME TAX
8 WITHHOLDING.

9 All payments of benefits made after December 31,
10 1996, are subject to the following:

11 a. An individual filing a new application for
12 benefits shall, at the time of filing the application,
13 be advised of the following:

14 (1) Benefits paid under this chapter are subject
15 to federal and state income tax.

16 (2) Legal requirements exist pertaining to
17 estimated tax payments.

18 (3) The individual may elect to have federal
19 income tax deducted and withheld from the individual's
20 payment of benefits at the amount specified in the
21 Internal Revenue Code as defined in section 422.3.

22 (4) The individual may elect to have Iowa state
23 income tax deducted and withheld from the individual's
24 payment of benefits at the rate of five percent.

25 (5) The individual shall be permitted to change
26 the individual's previously elected withholding
27 status.

28 b. Amounts deducted and withheld from benefits
29 shall remain in the unemployment compensation fund
30 until transferred to the appropriate taxing authority
31 as a payment of income tax.

32 c. The commissioner shall follow all procedures
33 specified by the United States department of labor,
34 the federal internal revenue service, and the
35 department of revenue and finance pertaining to the
36 deducting and withholding of income tax.

37 d. Amounts shall be deducted and withheld under
38 this subsection only after amounts are deducted and
39 withheld for any overpayment of benefits, child
40 support obligations, and any other amounts authorized
41 to be deducted and withheld under federal or state
42 law.

43 Sec. ____ . Section 96.5, subsection 1, paragraph i,
44 Code Supplement 1995, is amended to read as follows:

45 i. The individual is unemployed as a result of the
46 individual's employer selling or otherwise
47 transferring a clearly segregable and identifiable
48 part of the employer's business or enterprise to
49 another employer which does not make an offer of
50 suitable work to the individual as provided under

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1 subsection 3, ~~however~~. However, if the individual
2 does accept, and works in and is paid wages for,
3 suitable work with the acquiring employer, the
4 ~~acquiring employer immediately becomes chargeable for~~
5 the benefits paid which are based on the wages paid by
6 the transferring employer shall be charged to the
7 unemployment compensation fund provided that the
8 acquiring employer has not received, or will not
9 receive, a partial transfer of experience under the
10 provisions of section 96.7, subsection 2, paragraph
11 "b". Relief of charges under this paragraph applies
12 to both contributory and reimbursable employers,
13 notwithstanding section 96.8, subsection 5."

14 2. Page 2, by inserting after line 32 the
15 following:

16 "Sec. _____. Section 96.11, subsection 5, Code 1995,
17 is amended by striking the subsection.

18 Sec. _____. Section 96.11, subsection 6, Code 1995,
19 is amended to read as follows:

20 6. EMPLOYMENT STABILIZATION. The commissioner,
21 with the advice and aid of ~~the advisory council, and~~
22 through the appropriate bureaus of the division, shall
23 take all appropriate steps to reduce and prevent
24 unemployment; to encourage and assist in the adoption
25 of practical methods of vocational training,
26 retraining and vocational guidance; to investigate,
27 recommend, advise, and assist in the establishment and
28 operation, by municipalities, counties, school
29 districts, and the state, of reserves for public works
30 to be used in times of business depression and
31 unemployment; to promote the ~~re-employment~~
32 reemployment of unemployed workers throughout the
33 state in every other way that may be feasible; and to
34 these ends to carry on and publish the results of
35 investigations and research studies.

36 Sec. _____. Section 96.13, subsection 3, paragraph
37 a, unnumbered paragraph 1, Code 1995, is amended to
38 read as follows:

39 There is created in the state treasury a special
40 fund to be known as the special employment security
41 contingency fund. All interest, fines, and penalties,
42 regardless of when they become payable, collected from
43 employers under section 96.14 and section 96.16,
44 subsection 4, shall be paid into the fund. The moneys
45 shall not be expended or available for expenditure in
46 any manner which would permit their substitution for
47 federal funds which would in the absence of the moneys
48 be available to finance expenditures for the
49 administration of the department. However, the moneys
50 may be used as a revolving fund to cover expenditures

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1 for which federal funds have been duly requested but
2 not yet received, subject to the charging of the
3 expenditures against the funds when received. The
4 moneys may be used for the payment of costs of
5 administration which are found not to have been
6 properly and validly chargeable against federal grants
7 or other funds, received for the department. The
8 moneys in the fund are specifically made available to
9 replace, within a reasonable time, any moneys received
10 by this state in the form of grants from the federal
11 government for administrative expenses which because
12 of any action or contingency have been expended for
13 purposes other than, or in excess of, those necessary
14 for the proper administration of the department. All
15 moneys in the fund shall be deposited, administered,
16 and disbursed in the same manner and under the same
17 conditions and requirements as are provided by law for
18 other special funds in the state treasury. Interest
19 earned upon moneys in the fund shall be deposited in
20 and credited to the fund."

21 3. Page 3, by inserting after line 33 the
22 following:

23 "Sec. ____ . Section 96.19, subsection 18, paragraph
24 a, Code Supplement 1995, is amended by adding the
25 following new subparagraph:

26 NEW SUBPARAGRAPH. (9) A member of a limited
27 liability company. For such a member, the term
28 "employment" shall not include any portion of such
29 service that is performed in lieu of making a
30 contribution of cash or property to acquire a
31 membership interest in the limited liability company.

32 Sec. ____ . Section 96.19, subsection 18, paragraph
33 f, Code Supplement 1995, is amended to read as
34 follows:

35 f. (1) Services performed by an individual for
36 wages shall be deemed to be employment subject to this
37 chapter unless and until it is shown to the
38 satisfaction of the division of ~~job-service~~ that such
39 individual has been and will continue to be free from
40 control or direction over the performance of such
41 services, both under the individual's contract of
42 service and in fact.

43 (2) Services performed by an individual for two or
44 more employing units shall be deemed to be employment
45 to each employing unit for which the services are
46 performed. However, an individual who concurrently
47 performs services as a corporate officer for two or
48 more related corporations and who is paid through a
49 common paymaster that is one of the related
50 corporations may, at the discretion of such related

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1 corporations, be considered to be in the employment of
2 only the common paymaster.

3 Sec. ____ . Section 96.19, subsection 41, Code
4 Supplement 1995, is amended by adding the following
5 new paragraph:

6 NEW PARAGRAPH. e. Any portion of the remuneration
7 to a member of a limited liability company based on a
8 membership interest in the company provided that the
9 remuneration is allocated among members, and among
10 classes of members, in proportion to their respective
11 investments in the company. If the amount of
12 remuneration attributable to a membership interest
13 cannot be determined, the entire amount of
14 remuneration shall be deemed to be based on services
15 performed.

16 Sec. ____ . EFFECTIVE AND APPLICABILITY DATE. The
17 section of this Act which amends section 96.3 by
18 enacting a new subsection 10, takes effect on January
19 1, 1997, and is applicable to unemployment
20 compensation benefits paid on or after that date."

21 4. Title page, by striking lines 1 through 3 and
22 inserting the following: "An Act relating to the
23 components of the unemployment insurance system
24 concerning the job service advisory council, voluntary
25 income tax withholding from unemployment benefits,
26 relieving certain employers from certain unemployment
27 insurance charges, employer contributions and
28 liability for unemployment insurance benefits
29 regarding successor employers, definitions of
30 employment and wages for members of limited liability
31 companies, and unemployment insurance tax liability
32 for corporate officers, and providing an effective and
33 applicability date."

34 5. By renumbering as necessary.

By DON E. GETTINGS

S-5518 FILED MARCH 25, 1996

Adopted 3/26/96 (p. 1051)

HOUSE FILE 2229

S-5300

1 Amend House File 2229, as passed by the House, as
2 follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section 96.5, subsection 1, Code
6 Supplement 1995, is amended by adding the following
7 new paragraph:
8 NEW PARAGRAPH. j. The individual is a temporary
9 employee of a temporary employment firm who notifies
10 the temporary employment firm of completion of an
11 employment assignment and who seeks reassignment.
12 Failure of the individual to notify the temporary
13 employment firm of completion of an employment
14 assignment within three working days of the completion
15 of each employment assignment under a contract of hire
16 shall be deemed a voluntary quit unless the individual
17 was not advised in writing of the duty to notify the
18 temporary employment firm upon completion of an
19 employment assignment.
20 For purposes of this paragraph:
21 (1) "Temporary employee" means an individual who
22 is employed by a temporary employment firm to provide
23 services to clients to supplement their work force
24 during absences, seasonal workloads, temporary skill
25 or labor market shortages, and for special assignments
26 and projects.
27 (2) "Temporary employment firm" means a person
28 engaged in the business of employing temporary
29 employees."
30 2. By renumbering as necessary.

By MARY E. KRAMER

S-5300 FILED MARCH 12, 1996

o/o 3/26/96 (p. 1051)

HOUSE FILE 2229

S-5535

1 Amend the amendment, S-5518, to House File 2229, as
2 passed by the House, as follows:
3 1. By striking page 2, line 36, through page 3,
4 line 20.

By DON E. GETTINGS

S-5535 FILED MARCH 26, 1996

ADOPTED *(p. 1051)*

SENATE AMENDMENT TO HOUSE FILE 2229

H-5647

1 Amend House File 2229, as passed by the House, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Sec. ____ . Section 96.3, Code Supplement 1995, is
6 amended by adding the following new subsection:

7 NEW SUBSECTION. 10. VOLUNTARY INCOME TAX
8 WITHHOLDING.

9 All payments of benefits made after December 31,
10 1996, are subject to the following:

11 a. An individual filing a new application for
12 benefits shall, at the time of filing the application,
13 be advised of the following:

14 (1) Benefits paid under this chapter are subject
15 to federal and state income tax.

16 (2) Legal requirements exist pertaining to
17 estimated tax payments.

18 (3) The individual may elect to have federal
19 income tax deducted and withheld from the individual's
20 payment of benefits at the amount specified in the
21 Internal Revenue Code as defined in section 422.3.

22 (4) The individual may elect to have Iowa state
23 income tax deducted and withheld from the individual's
24 payment of benefits at the rate of five percent.

25 (5) The individual shall be permitted to change
26 the individual's previously elected withholding
27 status.

28 b. Amounts deducted and withheld from benefits
29 shall remain in the unemployment compensation fund
30 until transferred to the appropriate taxing authority
31 as a payment of income tax.

32 c. The commissioner shall follow all procedures
33 specified by the United States department of labor,
34 the federal internal revenue service, and the
35 department of revenue and finance pertaining to the
36 deducting and withholding of income tax.

37 d. Amounts shall be deducted and withheld under
38 this subsection only after amounts are deducted and
39 withheld for any overpayment of benefits, child
40 support obligations, and any other amounts authorized
41 to be deducted and withheld under federal or state
42 law.

43 Sec. ____ . Section 96.5, subsection 1, paragraph i,
44 Code Supplement 1995, is amended to read as follows:

45 i. The individual is unemployed as a result of the
46 individual's employer selling or otherwise
47 transferring a clearly segregable and identifiable
48 part of the employer's business or enterprise to
49 another employer which does not make an offer of
50 suitable work to the individual as provided under

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1 subsection 3, ~~however.~~ However, if the individual
2 does accept, and works in and is paid wages for,
3 suitable work with the acquiring employer, the
4 ~~acquiring employer immediately becomes chargeable for~~
5 ~~the~~ benefits paid which are based on the wages paid by
6 the transferring employer shall be charged to the
7 unemployment compensation fund provided that the
8 acquiring employer has not received, or will not
9 receive, a partial transfer of experience under the
10 provisions of section 96.7, subsection 2, paragraph
11 "b". Relief of charges under this paragraph applies
12 to both contributory and reimbursable employers,
13 notwithstanding section 96.8, subsection 5."

14 2. Page 2, by inserting after line 32 the
15 following:

16 "Sec. _____. Section 96.11, subsection 5, Code 1995,
17 is amended by striking the subsection.

18 Sec. _____. Section 96.11, subsection 6, Code 1995,
19 is amended to read as follows:

20 6. EMPLOYMENT STABILIZATION. The commissioner,
21 with the advice and aid of ~~the advisory council, and~~
22 through the appropriate bureaus of the division, shall
23 take all appropriate steps to reduce and prevent
24 unemployment; to encourage and assist in the adoption
25 of practical methods of vocational training,
26 retraining and vocational guidance; to investigate,
27 recommend, advise, and assist in the establishment and
28 operation, by municipalities, counties, school
29 districts, and the state, of reserves for public works
30 to be used in times of business depression and
31 unemployment; to promote the ~~re-employment~~
32 reemployment of unemployed workers throughout the
33 state in every other way that may be feasible; and to
34 these ends to carry on and publish the results of
35 investigations and research studies."

36 3. Page 3, by inserting after line 33 the
37 following:

38 "Sec. _____. Section 96.19, subsection 18, paragraph
39 a, Code Supplement 1995, is amended by adding the
40 following new subparagraph:

41 NEW SUBPARAGRAPH. (9) A member of a limited
42 liability company. For such a member, the term
43 "employment" shall not include any portion of such
44 service that is performed in lieu of making a
45 contribution of cash or property to acquire a
46 membership interest in the limited liability company.

47 Sec. _____. Section 96.19, subsection 18, paragraph
48 f, Code Supplement 1995, is amended to read as
49 follows:

50 f. (1) Services performed by an individual for

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Page 3

1 wages shall be deemed to be employment subject to this
2 chapter unless and until it is shown to the
3 satisfaction of the division ~~of job service~~ that such
4 individual has been and will continue to be free from
5 control or direction over the performance of such
6 services, both under the individual's contract of
7 service and in fact.

8 (2) Services performed by an individual for two or
9 more employing units shall be deemed to be employment
10 to each employing unit for which the services are
11 performed. However, an individual who concurrently
12 performs services as a corporate officer for two or
13 more related corporations and who is paid through a
14 common paymaster that is one of the related
15 corporations may, at the discretion of such related
16 corporations, be considered to be in the employment of
17 only the common paymaster.

18 Sec. ____ . Section 96.19, subsection 41, Code
19 Supplement 1995, is amended by adding the following
20 new paragraph:

21 NEW PARAGRAPH. e. Any portion of the remuneration
22 to a member of a limited liability company based on a
23 membership interest in the company provided that the
24 remuneration is allocated among members, and among
25 classes of members, in proportion to their respective
26 investments in the company. If the amount of
27 remuneration attributable to a membership interest
28 cannot be determined, the entire amount of
29 remuneration shall be deemed to be based on services
30 performed.

31 Sec. ____ . EFFECTIVE AND APPLICABILITY DATE. The
32 section of this Act which amends section 96.3 by
33 enacting a new subsection 10, takes effect on January
34 1, 1997, and is applicable to unemployment
35 compensation benefits paid on or after that date."

36 4. Title page, by striking lines 1 through 3 and
37 inserting the following: "An Act relating to the
38 components of the unemployment insurance system
39 concerning the job service advisory council, voluntary
40 income tax withholding from unemployment benefits,
41 relieving certain employers from certain unemployment
42 insurance charges, employer contributions and
43 liability for unemployment insurance benefits
44 regarding successor employers, definitions of
45 employment and wages for members of limited liability
46 companies, and unemployment insurance tax liability
47 for corporate officers, and providing an effective and
48 applicability date."

49 5. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-5647 FILED MARCH 26, 1996

House concurred 4/11/96 (p. 1546)

HSB 547

Jacobs - chair
Van Fossen
Nelson, L.

Succeeded By
SF/HF 2329

COMMERCE - REGULATION

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
EMPLOYMENT SERVICES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to unemployment insurance benefits by providing
2 for employer contributions and liability for benefits
3 regarding successor employers.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 96.7, subsection 2, paragraph e, Code
2 Supplement 1995, is amended to read as follows:

3 e. The division shall fix the contribution rate for each
4 employer and notify the employer of the rate by regular mail
5 to the last known address of the employer. An employer may
6 appeal to the division for a revision of the contribution rate
7 within thirty days from the date of the notice to the
8 employer. After providing an opportunity for a hearing, the
9 division may affirm, set aside, or modify its former
10 determination and may grant the employer a new contribution
11 rate. The division shall notify the employer of its decision
12 by regular mail. Judicial review of action of the division
13 may be sought pursuant to chapter 17A.

14 If an employer's account has been charged with benefits as
15 the result of a decision allowing benefits and the decision is
16 reversed, the employer may appeal, within thirty days from the
17 date of the next contribution rate notice, for a recomputation
18 of the rate. If contributions become due at a disputed
19 contribution rate prior to the employer receiving a decision
20 reversing benefits, the employer shall pay the contributions
21 at the disputed rate but shall be eligible for a refund
22 pursuant to section 96.14, subsection 5. If a base period
23 employer's account has been charged with benefits paid to an
24 employee at a time when the employee was employed by the base
25 period employer in the same employment as in the base period,
26 the employer may appeal, within thirty days from the date of
27 the first notice of the employer's contribution rate which is
28 based on the charges, for a recomputation of the rate.

29 Sec. 2. Section 96.7, subsection 7, paragraph e, Code
30 Supplement 1995, is amended to read as follows:

31 e. If an entire enterprise or business of a
32 reimbursable government governmental entity is sold or
33 otherwise transferred to a subsequent employing unit and the
34 successor acquiring employing unit continues to operate the
35 enterprise or business, the successor acquiring employing unit

1 shall assume the position of the reimbursable government
2 governmental entity with respect to the reimbursable
3 government governmental entity's liability to pay the division
4 for reimbursable benefits based on the governmental entity's
5 payroll and-reimbursable-benefits to the same extent as if no
6 change in the ownership or control of the enterprise or
7 business had occurred, whether or not the successor-employer
8 acquiring employing unit elected or elects, or was or is
9 eligible to elect, to become a reimbursable employer with
10 respect to the employer's acquiring employing unit's own
11 payroll prior to or after the sale-or-transfer acquisition of
12 the governmental entity's enterprise or business.

13 Sec. 3. Section 96.7, subsection 8, paragraph b,
14 subparagraph (6), Code Supplement 1995, is amended to read as
15 follows:

16 (6) If an the entire enterprise or business of a
17 reimbursable nonprofit organization is sold or otherwise
18 transferred to a subsequent employing unit and the successor
19 acquiring employing unit continues to operate the enterprise
20 or business, the successor acquiring employing unit shall
21 assume the position of the reimbursable nonprofit organization
22 with respect to the nonprofit organization's liability to pay
23 the division for reimbursable benefits based on the nonprofit
24 organization's payroll and-reimbursable-benefits to the same
25 extent as if no change in the ownership or control of the
26 enterprise or business had occurred, whether or not the
27 successor-employer acquiring employing unit elected or elects,
28 or was or is eligible to elect, to become a reimbursable
29 employer with respect to the employer's acquiring employing
30 unit's own payroll prior to or after the sale-or-transfer
31 acquisition of the nonprofit organization's enterprise or
32 business.

33 Sec. 4. Section 96.14, subsection 5, Code 1995, is amended
34 to read as follows:

35 5. REFUNDS, COMPROMISES AND SETTLEMENTS. If the division

1 of job service finds that an employer has paid contributions,
2 or interest on contributions, or penalties, which have been
3 erroneously paid or which-have-been-paid if the employer has
4 overpaid contributions because the employer's contribution
5 rate was subsequently reduced pursuant to section 96.7,
6 subsection 2, paragraph "e", solely due to benefits initially
7 charged against but later removed from an employer's account,
8 and the employer has filed an application for adjustment
9 refund, the division shall ~~make-an-adjustment, compromise, or~~
10 ~~settlement, and, at the employer's option, shall either refund~~
11 ~~the payments or treat the payments as voluntary contributions~~
12 ~~with no limitation on the payments' effects on the employer's~~
13 ~~contribution rate~~ refund the erroneous payment or overpayment.
14 Refunds so made shall be charged to the fund to which the
15 collections have been credited, and shall be paid to the
16 claimant employer without interest. A claim for refund shall
17 be made within three years from the date of payment. For like
18 cause, adjustments refunds, compromises, or-refunds and
19 settlements may be made by the division on its own initiative
20 within three years of the date of the payment or assessment.
21 If the division finds that the contribution that has been
22 assessed against an employer is of doubtful collectibility or
23 may not be collected in full, the division may institute a
24 proceeding in the district court in the county in which the
25 employer against which the tax is levied is located,
26 requesting authority to compromise the contribution. Notice
27 of the filing of an application shall be given to the
28 interested parties as the court may prescribe. The court upon
29 hearing may authorize the division to compromise and settle
30 its claim for the contribution and shall fix the amount to be
31 received by the division in full settlement of the claim and
32 shall authorize the release of the division's lien for the
33 contribution.

34

EXPLANATION

35 Section 1 of the bill provides that the division of job

1 service send contribution rate notices to employers by regular
2 mail at the employer's last known address. The section also
3 provides that the employer shall pay contributions at a
4 disputed rate prior to a decision concerning the rate but that
5 the employer is eligible for a refund pending a decision
6 reversing benefits. Sections 1 and 4 also add language
7 providing that the two Code sections dealing with employer
8 contribution rates and refunds both refer to the other
9 section.

10 Sections 2 and 3 change language concerning what occurs
11 when governmental or nonprofit reimbursable employers sell
12 their entire business. The bill changes "government" to
13 "governmental" and "successor employer" to "acquiring
14 employing unit".

15 BACKGROUND STATEMENT

16 SUBMITTED BY THE AGENCY

17 The changes in all four sections of this bill are technical
18 in nature and are intended for clarification of meaning,
19 consistency with other sections of the Code, and to remove
20 outdated language.

21 Section 1 clarifies that the division of job service send
22 contribution rate notices by regular mail to the last known
23 address and links section 96.7, subsection 2, to section
24 96.14, subsection 5, to clarify that the two sections must be
25 read together. Section 96.14, subsection 5, already infers
26 that the employer must pay tax at the disputed rate by
27 authorizing a refund if an overpayment of contributions is
28 caused by benefits being reversed.

29 The words "the entire" are being added to sections 2 and 3
30 of the bill to clarify that these sections deal with a
31 complete sale of a reimbursable employer's business. The rest
32 of the changes in language in sections 2 and 3 are for
33 consistency or clarification only.

34 Section 4 adds the words "or penalties" to clarify that
35 erroneously paid penalties may be refunded as is already

1 inferred by section 96.13, subsection 3, which states that
2 refunds of penalties are to come from the special employment
3 security contingency fund. Section 4 links the refund of
4 overpaid contributions because of the reversal of benefit
5 charges back to section 96.7, subsection 2, because there can
6 be no such overpayment of contributions if the rate is not
7 reduced on appeal. Section 4 removes outdated language about
8 voluntary contributions because private employer rates have
9 not used contributions in the computation since 1987. The
10 rest of the changes in section 4 are strictly for
11 clarification purposes.

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HOUSE FILE 2229

AN ACT

RELATING TO THE COMPONENTS OF THE UNEMPLOYMENT INSURANCE SYSTEM CONCERNING THE JOB SERVICE ADVISORY COUNCIL, VOLUNTARY INCOME TAX WITHHOLDING FROM UNEMPLOYMENT BENEFITS, RELIEVING CERTAIN EMPLOYERS FROM CERTAIN UNEMPLOYMENT INSURANCE CHARGES, EMPLOYER CONTRIBUTIONS AND LIABILITY FOR UNEMPLOYMENT INSURANCE BENEFITS REGARDING SUCCESSOR EMPLOYERS, DEFINITIONS OF EMPLOYMENT AND WAGES FOR MEMBERS OF LIMITED LIABILITY COMPANIES, AND UNEMPLOYMENT INSURANCE TAX LIABILITY FOR CORPORATE OFFICERS, AND PROVIDING AN EFFECTIVE AND APPLICABILITY DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 96.3, Code Supplement 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 10. VOLUNTARY INCOME TAX WITHHOLDING.

All payments of benefits made after December 31, 1996, are subject to the following:

a. An individual filing a new application for benefits shall, at the time of filing the application, be advised of the following:

- (1) Benefits paid under this chapter are subject to federal and state income tax.
- (2) Legal requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the Internal Revenue Code as defined in section 422.3.
- (4) The individual may elect to have Iowa state income tax deducted and withheld from the individual's payment of benefits at the rate of five percent.

(5) The individual shall be permitted to change the individual's previously elected withholding status.

b. Amounts deducted and withheld from benefits shall remain in the unemployment compensation fund until transferred to the appropriate taxing authority as a payment of income tax.

c. The commissioner shall follow all procedures specified by the United States department of labor, the federal internal revenue service, and the department of revenue and finance pertaining to the deducting and withholding of income tax.

d. Amounts shall be deducted and withheld under this subsection only after amounts are deducted and withheld for any overpayment of benefits, child support obligations, and any other amounts authorized to be deducted and withheld under federal or state law.

Sec. 2. Section 96.5, subsection 1, paragraph i, Code Supplement 1995, is amended to read as follows:

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3~~7~~7~~however~~however, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the ~~acquiring-employer-immediately becomes-chargeable-for-the~~ benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Sec. 3. Section 96.7, subsection 2, paragraph e, Code Supplement 1995, is amended to read as follows:

e. The division shall fix the contribution rate for each employer and notify the employer of the rate by regular mail

to the last known address of the employer. An employer may appeal to the division for a revision of the contribution rate within thirty days from the date of the notice to the employer. After providing an opportunity for a hearing, the division may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The division shall notify the employer of its decision by regular mail. Judicial review of action of the division may be sought pursuant to chapter 17A.

If an employer's account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may appeal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If contributions become due at a disputed contribution rate prior to the employer receiving a decision reversing benefits, the employer shall pay the contributions at the disputed rate but shall be eligible for a refund pursuant to section 96.14, subsection 5. If a base period employer's account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer's contribution rate which is based on the charges, for a recomputation of the rate.

Sec. 4. Section 96.7, subsection 7, paragraph e, Code Supplement 1995, is amended to read as follows:

e. If an the entire enterprise or business of a reimbursable government governmental entity is sold or otherwise transferred to a subsequent employing unit and the successor acquiring employing unit continues to operate the enterprise or business, the successor acquiring employing unit shall assume the position of the reimbursable government governmental entity with respect to the reimbursable government governmental entity's liability to pay the division for reimbursable benefits based on the governmental entity's payroll and-reimbursable-benefits to the same extent as if no change in the ownership or control of the enterprise or

business had occurred, whether or not the successor-employer acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's acquiring employing unit's own payroll prior to or after the sale-or-transfer acquisition of the governmental entity's enterprise or business.

Sec. 5. Section 96.7, subsection 8, paragraph b, subparagraph (6), Code Supplement 1995, is amended to read as follows:

(6) If an the entire enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the successor acquiring employing unit continues to operate the enterprise or business, the successor acquiring employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's liability to pay the division for reimbursable benefits based on the nonprofit organization's payroll and-reimbursable-benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor-employer acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's acquiring employing unit's own payroll prior to or after the sale-or-transfer acquisition of the nonprofit organization's enterprise or business.

Sec. 6. Section 96.11, subsection 5, Code 1995, is amended by striking the subsection.

Sec. 7. Section 96.11, subsection 6, Code 1995, is amended to read as follows:

6. EMPLOYMENT STABILIZATION. The commissioner, with the advice and aid of ~~the advisory council, and through~~ the appropriate bureaus of the division, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the

establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

Sec. 8. Section 96.14, subsection 5, Code 1995, is amended to read as follows:

5. REFUNDS, COMPROMISES AND SETTLEMENTS. If the division of job service finds that an employer has paid contributions, or interest on contributions, or penalties, which have been erroneously paid or ~~which have been paid~~ if the employer has overpaid contributions because the employer's contribution rate was subsequently reduced pursuant to section 96.7, subsection 2, paragraph "e", solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for adjustment refund, the division shall ~~make an adjustment, compromise, or settlement, and, at the employer's option, shall either refund the payments or treat the payments as voluntary contributions with no limitation on the payments' effects on the employer's contribution rate~~ refund the erroneous payment or overpayment. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the claimant employer without interest. A claim for refund shall be made within three years from the date of payment. For like cause, adjustments refunds, compromises, or refunds and settlements may be made by the division on its own initiative within three years of the date of the payment or assessment. If the division finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the division may institute a proceeding in the district court in the county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the

interested parties as the court may prescribe. The court upon hearing may authorize the division to compromise and settle its claim for the contribution and shall fix the amount to be received by the division in full settlement of the claim and shall authorize the release of the division's lien for the contribution.

Sec. 9. Section 96.19, subsection 18, paragraph a, Code Supplement 1995, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (9) A member of a limited liability company. For such a member, the term "employment" shall not include any portion of such service that is performed in lieu of making a contribution of cash or property to acquire a membership interest in the limited liability company.

Sec. 10. Section 96.19, subsection 18, paragraph f, Code Supplement 1995, is amended to read as follows:

f. (1) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the division ~~of job service~~ that such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact.

(2) Services performed by an individual for two or more employing units shall be deemed to be employment to each employing unit for which the services are performed. However, an individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may, at the discretion of such related corporations, be considered to be in the employment of only the common paymaster.

Sec. 11. Section 96.19, subsection 41, Code Supplement 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Any portion of the remuneration to a member of a limited liability company based on a membership interest in the company provided that the remuneration is

allocated among members, and among classes of members, in proportion to their respective investments in the company. If the amount of remuneration attributable to a membership interest cannot be determined, the entire amount of remuneration shall be deemed to be based on services performed.

Sec. 12. EFFECTIVE AND APPLICABILITY DATE. The section of this Act which amends section 96.3 by enacting a new subsection 10, takes effect on January 1, 1997, and is applicable to unemployment compensation benefits paid on or after that date.

RON J. CORBETT
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2229, Seventy-sixth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/17, 1996

TERRY E. BRANSTAD
Governor