Article 2.

Contributions and Payments by Employers.

§§ 96-8, 96-9: Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

§ 96-9.1. Purpose.

The purpose of this Article is to provide revenue to finance the unemployment benefits allowed under this Chapter and to do so in as simple a manner as possible by imposing a State unemployment tax that is similar to the federal unemployment tax imposed under FUTA. All employers that are liable for the federal unemployment tax on wages paid for services performed in this State and all employers that are required by FUTA to be given a state reimbursement option are liable for a State unemployment tax on wages. Revenue from this tax, referred to as a contribution, is credited to the Unemployment Insurance Fund established in G.S. 96-6. (2013-2, s. 2(b); 2013-224, s. 19.)

§ 96-9.2. Required contributions to the Unemployment Insurance Fund.

(a) Required Contribution. – An employer is required to make a contribution in each calendar year to the Unemployment Insurance Fund in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed. Taxable wages are determined in accordance with G.S. 96-9.3. The applicable percentage for an employer is considered the employer's contribution rate and determined in accordance with this section.

(b) Contribution Rate for Beginning Employer. – The contribution rate for a beginning employer until the employer's account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date is one percent (1%). An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters and its liability extends over all or part of two consecutive calendar years.

(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an experience-rated employer who does not qualify as a beginning employer under subsection (b) of this section is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on June 30 preceding the computation date. The calculations in the table set out below are applied as of September 1 following the computation date. An employer's experience rating is computed as a reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.

UI Trust Fund Balance as Percentage of Total Insured Wages	**Contribution Rate**
Less than or equal to 1%	2.9% minus ERRP
Greater than 1% but less than or equal to 1.25%	2.4% minus ERRP

Greater than 1.25% 1.9% minus ERRP

(d) Notification of Contribution Rate. – The Division must notify an employer of the employer's contribution rate for a calendar year by January 1 of that year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(e) Voluntary Contribution. – An employer that is subject to this section may make a voluntary contribution to the Unemployment Insurance Fund in addition to its required contribution. A voluntary contribution is credited to the employer's account. A voluntary contribution made by an employer within 30 days after the date on an annual notice of its contribution rate is considered to have been made as of the previous July 31. (2013-2, s. 2(b); 2013-224, ss. 5, 19; 2013-391, s. 2; 2015-238, s. 4.1(a); 2016-92, s. 5(a).)

§ 96-9.3. Determination of taxable wages.

(a) Determination. – The Division must determine the taxable wages for each calendar year. An employer is not liable for contributions on wages paid to an employee in excess of taxable wages. The taxable wages of an employee is an amount equal to the greater of the following:

(1) The federal taxable wages set in section 3306 of the Code.

(2) Fifty percent (50%) of the average yearly insured wage, rounded to the nearest multiple of one hundred dollars ($100.00). The average yearly insured wage is the average weekly wage on the computation date multiplied by 52.

(b) Wages Included. – The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds taxable wages:

(1) Wages paid to an individual in this State by an employer that made contributions in another state upon the wages paid to the individual because the work was performed in the other state.

(2) Wages paid by a successor employer to an individual when all of the following apply:

a. The individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired.

b. The predecessor employer paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition.

c. The account of the predecessor is transferred to the successor. (2013-2, s. 2(b); 2013-224, s. 19.)

§ 96-9.4. Determination of employer's reserve ratio.

(a) Account Balance. – The Division must determine the balance of an employer's account on the computation date by subtracting the total amount of all benefits charged to the employer's account for all past periods from the total of all contributions and other amounts credited to the employer for those periods. If the Division finds that an employer failed to file a report or finds that a report filed by an employer is incorrect or insufficient, the Division must determine the employer's account balance based upon the best information available to it and must notify the employer that it will use this balance to determine the employer's reserve ratio unless the employer provides additional information within 15 days of the date of the notice.

(b) Reserve Ratio. – The Division must determine an employer's reserve ratio, which is used to determine the employer's contribution rate. The employer's reserve ratio is the quotient obtained by dividing the employer's account balance on the computation date by the total taxable payroll of the employer for the 36 calendar month period ending June 30 preceding the computation date, expressed as a percentage. (2013-2, s. 2(b); 2013-224, s. 19.)

§ 96-9.5. Performance of services in this State.

A service is performed in this State if it meets one or more of the following descriptions:

(1) The service is localized in this State. Service is localized in this State if it meets one of the following conditions:
   a. It is performed entirely within the State.
   b. It is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State. For example, the individual's service without the State is temporary or transitory in nature or consists of isolated transactions.

(2) The service is not localized in any state but some of the service is performed in this State, and one or more of the following applies:
   a. The base of operations is in this State.
   b. There is no base of operations and the place from which the service is directed or controlled is in this State.
   c. The service is not performed in any state that has a base of operations or a place from which the service is directed or controlled and the individual who performs the service is a resident of this State.

(3) The service, wherever performed, is within the United States or Canada and both of the following apply:
   a. The service is not covered under the employment security law of any other state or Canada.
   b. The place from which the service is directed or controlled is in this State.

(4) The service is performed outside the United States or Canada by a citizen of the United States in the employ of an American employer and at least one of the following applies. For purposes of this subdivision, the term "American employer" has the same meaning as defined in section 3306 of the Code:
   a. The employer's principal place of business in the United States is located in this State.
   b. The employer has no place of business in the United States, but the employer is one of the following:
      1. An individual who is a resident of this State.
      2. A corporation that is organized under the laws of this State.
      3. A partnership or a trust and more of its partners or trustees are residents of this State than of any other state.
      4. A limited liability company and more of its members are residents of this State than of any other state.
   c. The employer has elected coverage in this State in accordance with G.S. 96-9.8.

d. The employer has not elected coverage in any state and the employee has filed a claim for benefits under the law of this State based on the service provided to the employer. (2013-2, s. 2(b); 2013-224, ss. 19, 20(c).)

§ 96-9.6. Election to reimburse Unemployment Insurance Fund in lieu of contributions.

(a) Applicability. – This section applies to a governmental entity, a nonprofit organization, and an Indian tribe that is required by section 3309 of the Code to have a reimbursement option. Each of these employers must finance benefits under the contributions method imposed under G.S. 96-9.2 unless the employer elects to finance benefits by making reimbursable payments to the Division for the Unemployment Insurance Fund.

(b) Election. – An employer may make an election under this section by filing a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by the tribe. A new employer may make an election under this section by filing a written notice of its election within 30 days after the employer receives notification from the Division that it is eligible to make an election under this section.

An election is valid for a minimum of four years and is binding until the employer files a notice terminating its election. An employer must file a written notice of termination with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify an employer of a determination of the effective date of an election the employer makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review. An employer that makes the election allowed by this section may not deduct any amount due under this section from the remuneration of the individuals it employs.

(c) Reimbursable Amount. – An employer must reimburse the Unemployment Insurance Fund for the amount of benefits that are paid to an individual for weeks of unemployment that begin within a benefit year established during the effective period of the employer's election and are attributable to service that is covered by section 3309 of the Code and was performed in the employ of the employer. For regular benefits, the reimbursable amount is the amount of regular benefits paid. For extended benefits, the reimbursable amount is the amount not reimbursed by the federal government.

(d) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must charge to the account benefits that are paid by the Unemployment Insurance Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election and are attributable to service in the employ of the employer. All benefits paid must be charged to the employer's account except benefits paid through error.

The Division must furnish an employer with a statement of all credits and charges made to its account as of the computation date prior to January 1 of the succeeding year. The Division may, in its sole discretion, provide a reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly if the Division finds it is in the best interest of the Division and the affected employer to do so.

(e) Annual Reconciliation. – A reimbursing employer must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account on the computation date. If there is a deficit in the account, the Division must bill the employer for the amount necessary to bring its account to one percent (1%) of its taxable

wages for the immediate four quarters preceding July 1. Except as provided in subsection (j) of this section, any amount in the account in excess of the one percent (1%) of taxable wages will be retained in the employer's account as a credit and will not be refunded to the employer. The Division must send a bill as soon as practical. Payment is due within 30 days from the date a bill is mailed. Amounts unpaid by the due date accrue interest and penalties in the same manner as past-due contributions and are subject to the same collection remedies provided under G.S. 96-10 for past-due contributions.

(f) Quarterly Wage Reports. – A reimbursing employer must submit quarterly wage reports to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. During the first four quarters following an election to be a reimbursing employer, the employer must submit an advance payment with its quarterly report. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported on the quarterly wage report. The Division must remit the payments to the Unemployment Insurance Fund and credit the payments to the employer's account.

(g) Change in Election. – The Division must close the account of an employer that has been paying contributions under G.S. 96-9.2 and that elects to change to a reimbursement basis under this section. A closed account may not be used in any future computation of a contribution rate. The Division must close the account of an employer that terminates its election to reimburse the Unemployment Insurance Fund in lieu of making contributions. An employer that terminates its election under this section is subject to the standard beginning rate.

(h) Noncompliance by Indian Tribes. – An Indian tribe that makes an election under this section and then fails to comply with this section is subject to the following consequences:

(1) An employer that fails to pay an amount due within 90 days after receiving a bill and has not paid this liability as of the computation date loses the option to make reimbursable payments in lieu of contributions for the following calendar year. An employer that loses the option to make reimbursable payments in lieu of contributions for a calendar year regains that option for the following calendar year if it pays its outstanding liability and makes all contributions during the year for which the option was lost.

(2) Services performed for an employer that fails to make payments, including interest and penalties, required under this section after all collection activities considered necessary by the Division have been exhausted, are no longer treated as "employment" for the purpose of coverage under this Chapter. An employer that has lost coverage regains coverage under this Chapter for services performed if the Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid. The Division must notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subsection.

(i) Expired January 1, 2016.

(j) Refund. – If a reimbursing employer erroneously remits an amount in excess of the amount due, the employer may apply to the Division for a refund of the excess amount remitted within the time limits in this subsection. The Division must determine that the requested refund was in excess of the amount due and was erroneously paid. The Division must refund, without interest, the excess amount but in no event will the refund result in an account balance less than one

percent (1%) of the reimbursing employer's taxable wages. The refund application must be filed by the later of the following:

(1) Five years from the last day of the calendar year with respect to which a payment was made.

(2) One year from the date on which such payment was made. (2013-2, s. 2(b); 2013-224, ss. 6, 7, 19; 2017-8, s. 3.3(a).)

§ 96-9.7. Surtax for the Unemployment Insurance Reserve Fund.

(a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and administered in the same manner as contributions. Surtaxes collected under this section must be credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.2. Interest and penalties collected on unpaid surtaxes imposed by this section must be credited to the Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1.

(b) Suspension of Tax. – The tax does not apply in a calendar year if, as of September 1 of the preceding calendar year, the amount in the State's account in the Unemployment Trust Fund equals or exceeds one billion dollars ($1,000,000,000). (2013-2, s. 2(b); 2013-224, ss. 8, 19; 2017-8, s. 3.1(a).)

§ 96-9.8. Voluntary election to pay contributions.

(a) When Allowed. – An employer may elect to be subject to the contribution requirement imposed by G.S. 96-9.2 and thereby provide benefit coverage for its employees as follows:

(1) An employer that is not otherwise liable for contributions under G.S. 96-9.2 may elect to pay contributions to the same extent as an employer that is liable for those contributions.

(2) An employer that pays for services that are not otherwise subject to the contribution requirement may elect to pay contributions on those services performed by individuals in its employ in one or more distinct establishments or places of business.

(3) An employer that employs the services of an individual who resides within this State but performs the services entirely without the State may elect to have the individual's service constitute employment subject to contributions if no contributions are required or paid with respect to the services under an employment security law of any other state or of the federal government.

(b) Election. – To make an election under this section, an employer must file an application with the Division. An election is effective on the date stated by the Division in a letter approving the election. An election is irrevocable for the two-year period beginning on the effective date.

(c) Termination. – The Division may, on its own motion, terminate coverage of an employer who has become subject to this Chapter solely by electing coverage under this section. This termination may occur within the two-year minimum election period. The Division must give the employer 30 days written notice of a decision to terminate an election. The notice must be mailed to the employer's last known address. An employer that elects coverage under this section may, subsequent to the two-year minimum election period, terminate the election by filing a notice

of termination with the Division. The notice must be given prior to the first day of March following the first day of January of the calendar year for which the employer wishes to cease coverage under this section. (2013-2, s. 2(b); 2013-224, s. 19.)

§ 96-9.9: Reserved for future codification purposes.

§ 96-9.10: Reserved for future codification purposes.

§ 96-9.11: Reserved for future codification purposes.

§ 96-9.12: Reserved for future codification purposes.

§ 96-9.13: Reserved for future codification purposes.

§ 96-9.14: Reserved for future codification purposes.