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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 4@ CONTRIBUTIONS AND REPORTS

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Article 2@ "WAGES" THE BASIS OF THE CONTRIBUTION

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Section 930.5-1@ Limitation on Amount of Taxable Wages - Application to Acquiring Employer

930.5-1 Limitation on Amount of Taxable Wages - Application to Acquiring Employer

(a)

The following definitions apply to terms used in Section 930.5 of the code: (1)

"Acquiring employer" means an employing unit which qualifies as an employer as defined in Article 3 (commencing with Section 675) of Chapter 3 of Part 1 of Division 1 of the code under any of the following circumstances: (A) Prior to the date of acquisition. (B) In the calendar quarter in which the acquisition occurred. (C) During the calendar quarter immediately succeeding the calendar quarter in which the acquisition occurred. (2) "Acquisition" means a transfer of possession and control of the property by any means, including purchase, lease, gift, bequest, merger, or incorporation. (3) "Substantially all the property used in a trade or business" or "used in a separate unit of a trade or business" is acquired if an employing unit acquires all of the property of a trade or business, or a separate unit thereof, of any employer which generates substantially all of the employment, except any property retained by the predecessor incident to the liquidation of his obligations. (4) A "separate unit" is acquired if an employing unit acquires factors of any employer's trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely dry assets from which a new business may be built. The question of whether a separate unit is acquired is determined from all of the factors of the

particular case. Among the factors to be considered are: (A) The place of business. (B) The staff of employees. (C) The customers. (D) The goodwill. (E) The trade name. (F) The stock in trade. (G) The accounts receivable. (H) The tools and fixtures. (I) Other assets.

(1)

"Acquiring employer" means an employing unit which qualifies as an employer as defined in Article 3 (commencing with Section 675) of Chapter 3 of Part 1 of Division 1 of the code under any of the following circumstances: (A) Prior to the date of acquisition. (B) In the calendar quarter in which the acquisition occurred. (C) During the calendar quarter immediately succeeding the calendar quarter in which the acquisition occurred.

(A)

Prior to the date of acquisition.

(B)

In the calendar quarter in which the acquisition occurred.

(C)

During the calendar quarter immediately succeeding the calendar quarter in which the acquisition occurred.

(2)

"Acquisition" means a transfer of possession and control of the property by any means, including purchase, lease, gift, bequest, merger, or incorporation.

(3)

"Substantially all the property used in a trade or business" or "used in a separate unit of a trade or business" is acquired if an employing unit acquires all of the property of a trade or business, or a separate unit thereof, of any employer which generates substantially all of the employment, except any property retained by the predecessor

incident to the liquidation of his obligations.

(4)

A "separate unit" is acquired if an employing unit acquires factors of any employer's trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely dry assets from which a new business may be built. The question of whether a separate unit is acquired is determined from all of the factors of the particular case. Among the factors to be considered are: (A) The place of business. (B) The staff of employees. (C) The customers. (D) The goodwill. (E) The trade name. (F) The stock in trade. (G) The accounts receivable. (H) The tools and fixtures. (I) Other assets.

(A)

The place of business.

(B)

The staff of employees.

(C)

The customers.

(D)

The goodwill.

(E)

The trade name.

(F)

The stock in trade.

(G)

The accounts receivable.

(H)

The tools and fixtures.

(l)

Other assets.

(b)

(1) For the purpose of determining the application of the limitations on taxable wages under Sections 930 and 985 of the code, wages paid during a calendar year by the predecessor employer to an individual prior to the acquisition shall be considered as having been paid by the acquiring employer if not more than two pay periods elapse between the performance of services by the individual for the predecessor employer and for the acquiring employer and the individual performs services in employment either: (A) For the predecessor employer during the calendar quarter in which the acquisition occurred, and for the acquiring employer either during such calendar quarter or during the calendar quarter immediately following such calendar quarter; or (B) For the acquiring employer during the calendar quarter in which the acquisition occurred, and for the predecessor employer either during such calendar quarter or during the calendar quarter immediately preceding such calendar quarter. (2) Notwithstanding paragraph (1) of this subdivision, an individual who performs services for the predecessor employer and the acquiring employer within the calendar quarters as specified by paragraph (1) of this subdivision shall be deemed to have been employed by the predecessor employer "immediately prior to the acquisition" and by the acquiring employer "immediately after the acquisition" if the acquiring employer temporarily closes the trade or business for a period not exceeding three months for the purpose of restocking or reconstruction or refurbishing of the business premises and the individual has not performed services for the acquiring employer during the period of, or performs services during a portion of the period of, the temporary closure of the trade or business.

(1)

For the purpose of determining the application of the limitations on taxable wages under Sections 930 and 985 of the code, wages paid during a calendar year by the predecessor employer to an individual prior to the acquisition shall be considered as having been paid by the acquiring employer if not more than two pay periods elapse between the performance of services by the individual for the predecessor employer and for the acquiring employer and the individual performs services in employment either: (A) For the predecessor employer during the calendar quarter in which the acquisition occurred, and for the acquiring employer either during such calendar quarter or during the calendar quarter immediately following such calendar quarter; or (B) For the acquiring employer during the calendar quarter in which the acquisition occurred, and for the predecessor employer either during such calendar quarter or during the calendar quarter immediately preceding such calendar quarter.

(A)

For the predecessor employer during the calendar quarter in which the acquisition occurred, and for the acquiring employer either during such calendar quarter or during the calendar quarter immediately following such calendar quarter; or

(B)

For the acquiring employer during the calendar quarter in which the acquisition occurred, and for the predecessor employer either during such calendar quarter or during the calendar quarter immediately preceding such calendar quarter.

(2)

Notwithstanding paragraph (1) of this subdivision, an individual who performs services for the predecessor employer and the acquiring employer within the calendar quarters as specified by paragraph (1) of this subdivision shall be deemed to have been employed by the predecessor employer "immediately prior to the acquisition" and by

the acquiring employer "immediately after the acquisition" if the acquiring employer temporarily closes the trade or business for a period not exceeding three months for the purpose of restocking or reconstruction or refurbishing of the business premises and the individual has not performed services for the acquiring employer during the period of, or performs services during a portion of the period of, the temporary closure of the trade or business.

(c)

Wages paid by the predecessor employer for services performed in its employ after the date of acquisition shall not be considered as having been paid by the acquiring employer.