

CHAPTER 3910

DEPARTMENT OF EMPLOYEE RELATIONS

SOCIAL SECURITY

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3910.0100 STATUTORY AUTHORITY AND SCOPE.

Chapter 3910 is promulgated under Minnesota Statutes, chapter 355, and applies to the state, any political subdivision of the state, or any coverage group to be included under the federal old age and survivors insurance system.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0200 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Coverage group.** "Coverage group" means the grouping of positions in any political subdivision of the state as they are brought under the provisions of the federal Social Security Act, pursuant to Minnesota Statutes, chapter 355, and for which contributions for each grouping are required by law to be transmitted to the state agency.

Subp. 3. **Employee, employment.** "Employee" and "employment" have the meanings given them in Minnesota Statutes, section 355.01.

Subp. 4. **Federal Insurance Contributions Act.** "Federal Insurance Contributions Act" has the meaning given it in Minnesota Statutes, section 355.01.

Subp. 5. **Federal old age and survivors insurance.** "Federal old age and survivors insurance" means the insurance system established by title II of the federal Social Security Act, United States Code, title 42, section 418.

Subp. 6. **Political subdivision.** "Political subdivision" has the meaning given it in Minnesota Statutes, section 355.01.

Subp. 7. **Reportable wages.** "Reportable wages" means reportable wages as provided by title II of the federal Social Security Act. "Maximum reportable wages" means maximum reportable wages as provided by title II of the federal Social Security Act.

Subp. 8. **Reporting unit.** "Reporting unit" means the payroll record unit of a state or political subdivision.

Subp. 9. **Social Security Act.** "Social Security Act" has the meaning given it in Minnesota Statutes, section 355.01.

Subp. 10. **State agency.** "State agency" has the meaning given it in Minnesota Statutes, section 355.01.

Subp. 11. **State agreement.** "State agreement" means the agreement or modification authorized by Minnesota Statutes, chapter 355, entered into between the state and the secretary of health and human services.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0300 EMPLOYEE ACCOUNT NUMBERS.

Subpart 1. **When required.** It is necessary for each covered employee of a political subdivision to have a social security account number when the political subdivision makes its first wage report for federal old age and survivors insurance.

Subp. 2. **Obtaining a number.** Each employee shall submit his or her social security account number for the records of the reporting unit. An employee who does not have a num-

ber shall apply for a number with any field office of the Social Security Administration within seven days after beginning work for the reporting unit. However, if the employee leaves the employ of the reporting unit before the seventh day, he or she must apply for a number on or before the date of leaving. Application must be made on Social Security Administration form SS-5.

Subp. 3. Keeping one number only. An employee must not have more than one account number. Any employee whose name is changed by marriage or otherwise, or who wishes to correct information given on social security form SS-5, should report the change or correction to a field office of the Social Security Administration. The old name should be used for payroll and for wage report purposes until the change has been processed by the Social Security Administration.

Subp. 4. Showing card. The political subdivision shall enter the employee's name and account number on all records, returns, reports, and claims exactly as shown on his or her account number card. If a person fails to show the card when he or she first performs services under an agreement, the political subdivision that employs the person shall ask to see the person's card.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0400 IDENTIFICATION NUMBER FOR COVERAGE GROUPS.

The Social Security Administration will assign an employer identification number to the state, each political subdivision of the state, and each coverage group to be included under the federal old age and survivors insurance system. If any political subdivision maintains more than one payroll record unit, a unit number will be assigned to each separate payroll record within the coverage group. The identification number, including the unit numbers assigned to payroll record units, if any, must be entered on all reports, returns, forms, claims, and correspondence.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0500 EMPLOYEE'S AND EMPLOYER'S CONTRIBUTION.

Subpart 1. Amount subject to deduction. The employee's contribution is measured by the amount of wages actually received on or after the effective date of the state agreement with respect to services performed in employment by the employee in a coverage group included in the agreement. After an employee has been paid the maximum reportable wages during a calendar year, additional wages paid that employee during the remainder of the calendar year are not subject to deductions for social security taxes, and no further wage contributions are required.

Subp. 2. Tax rates. The contribution rates established by title II of the federal Social Security Act, United States Code, title 42, section 418, must be applied against the wages of employees within the coverage group and matched with an equal amount by the reporting unit. Taxes must be computed on the basis of the rate effective at the time the wages are actually or constructively received or paid.

Subp. 3. Certain wages excepted. Wages received by an employee after the effective date of coverage for services rendered in a period before the effective date of coverage are not "wages received for employment" and are not subject to tax. Therefore, if the state agreement makes social security coverage effective January 1 of a calendar year, wages received by an employee in that calendar year for services rendered in the previous calendar year are not "wages received for employment" and are not subject to tax.

Subp. 4. Records required. Any political subdivision or any employee claiming refund, credit, or abatement of any tax or interest collected shall present a detailed record to establish the validity of the claim.

Subp. 5. Controls. Each political subdivision shall establish a system of controls so that no employee is taxed on wages in excess of the maximum reportable wages as provided in United States Code, title 42, section 418, for each calendar year. These controls must be set up so that the tax will be withheld on the exact amount of the reportable wages as provided in title II of the federal Social Security Act received by an employee in a calendar year. There shall be no prorating of the year's total tax liability of the employees over the 12-month period.

Subp. 6. **Termination of reporting unit.** Any political subdivision whose existence is terminated by reorganization, consolidation, or annexation or which is abolished by statute or other legal action shall report this fact to the state agency at the time the final report is submitted and also indicate at that time where all records and documents will be stored or maintained and the name of the person or officer responsible for the safekeeping of the records and documents.

Subp. 7. **Wage and tax statement.** Each political subdivision shall furnish a written wage and tax statement to each individual performing service in employment as an employee in a coverage group included in the state agreement. The statement must show the following information with respect to wages paid or available for payment to the employee for the service on or after the effective date of the agreement or modification:

- A. the name and identification number of the political subdivision or coverage group in which services were performed;
- B. the name and account number of the employee;
- C. the period covered by the statement;
- D. the total amount of wages subject to contributions paid during this period; and
- E. the amount of employee's contribution withheld in respect to wages.

The statement must be given to the employee not later than January 31 of the year following the calendar year covered by the statement unless the employee leaves employment in a coverage group, in which case the final statement must be given to the employee no later than 30 days after the last payment of wages is made. Federal Internal Revenue Service form W-2, withholding statement, shall be used to satisfy items A to E.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0600 COLLECTING AND REMITTING TAX.

Subpart 1. **Responsibility for collecting.** The reporting unit shall collect from each employee the amount of tax determined to be due by deducting that amount from the employee's wages when actually or constructively paid. The reporting unit shall collect the tax even if the wages are paid in a medium other than cash.

Subp. 2. **Schedule.** After the reporting unit has provided the matching amount, the total social security contribution must be remitted to the state agency for credit to the social security contributions fund in accordance with the following schedule:

A. Effective with wages paid after December 31, 1983, social security contributions due on wages paid during the period from the first day through the 15th day of each calendar month must be forwarded to the state agency on or before the 20th day of the month. The remittance must be postmarked not later than the 20th day of that month. Social security contributions due on wages paid during the period beginning with the 16th day of each calendar month and ending with the last day of that calendar month must be forwarded to the state agency on or before the fifth day of the following calendar month. The remittance must be postmarked not later than the fifth day of the following month.

B. Where the state assumes the responsibility for the matching employer social security contribution under Minnesota Statutes, section 355.46, subdivision 3, clause (b), the payments under item A must be equal to the required employee contribution withheld only.

C. In lieu of remitting at the times indicated above, the reporting unit may remit the required social security contribution payment at the end of each payroll period or after each salary payment made to the employees. In no event may the contribution payment be made later than the times specified in item A.

D. With each contribution payment, the reporting unit shall submit a completed approved remittance form prescribed by the state agency.

E. If any contribution payment is not received by the state agency within the deadlines specified in item A, the state agency shall charge interest to the reporting unit. The interest assessment must be the same rate of interest charged the state by the Social Security Administration applied to the contributions due for each month or part of a month from the due date, but in no case may the interest charge be less than \$5.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

History: 8 SR 1479

3910.0700 SOCIAL SECURITY

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3910.0700 SUBMITTING CONTRIBUTIONS.

A political subdivision must not send social security contributions directly to the Social Security Administration, a depository bank, or a federal reserve bank.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0800 LIABILITY FOR TAX.

The reporting unit is liable to the state agency for the employee's share of the tax whether or not the share has been withheld from the employee's wages. Nevertheless, the employee remains liable for the employee's share of the tax on all wages received by the employee not in excess of the maximum reportable wages.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.0900 REPORTING UNIT'S FAILURE TO PAY STATE AGENCY.

If a reporting unit fails to make the social security contribution payments required by law and this chapter, the state agency may recover by bringing action in a court of competent jurisdiction against every political subdivision liable for payments. The state agency may recover either the delinquent payments due with interest at the rate established in part 3910.0600, subpart 2, item E, or the minimum penalty established by this chapter, whichever is greater. Alternatively, at the state agency's request, the delinquent payments may be deducted from any other money payable to the political subdivision by any department or agency of the state.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

History: 8 SR 1479

3910.1000 WHEN EMPLOYER MAY BEGIN DEDUCTING.

The state or a political subdivision may not begin making deductions for social security taxes from the earnings of employees until the secretary of health and human services has approved the state agreement on behalf of the federal government. However, as soon as the state agreement is fully executed and approved, the political subdivision shall make the necessary deductions from earnings, retroactive to the effective date of the state agreement, so that the total contribution payments required from the effective date of the state agreement are transmitted to the state agency along with initial reports before the initial deadline determined by the state agency. The exact method and time of deducting retroactive contributions from employees are matters to be determined by each political subdivision individually.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.1100 SICK PAY.

Subpart 1. Counting sick pay as wages for social security purposes. Effective January 1, 1982, payments made by the state or any political subdivision to an employee absent from work because of sickness or accident disability are wages for the first six months after the last month the employee worked. Wages include payments made by third parties, such as insurance companies, under group sickness and accident policies. Payments to an employee by either the governmental unit or a third party are excluded from wages if they are made more than six months after the last month in which the employee worked.

Subp. 2. Employee's contributions to sick pay plan. If an employee has contributed to a sick pay plan, the wages for social security purposes do not include that portion of the payment attributable to the employee's contribution.

Subp. 3. Arrangements with party making payments. The reporting unit shall arrange to have the third party, usually an insurance company, withhold the employee contributions from the sick pay payments, remit the amount withheld to the reporting unit, and provide the wage data needed to prepare wage reports. The sick pay employee contributions, matching employer contribution, if any, and the corresponding wage data should be included on the monthly social security contribution transmittal forms with all other contributions and wages for that period.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.1200 WAGE REPORTS.

Every political subdivision and coverage group included in the state agreement shall make a wage report to the state agency for each reporting period beginning with the first re-

porting period with respect to which the state agreement is effective until the subdivision or group files a final report as required by law.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.1300 QUARTERLY REPORTS BEFORE 1981.

Subpart 1. **General requirement.** Quarterly reporting of covered wages paid is required for periods prior to January 1, 1981.

Subp. 2. **Form and coverage.** The original and one duplicate copy of the consolidated quarterly payroll report must be submitted on Social Security Administration form SSA-3963 for each reporting unit in conformity with the requirements of the secretary of health and human services. Each quarterly report must be a consolidated report, which must include all covered wages paid to personnel employed by any department, board, and commission reportable under the identification number assigned to the political subdivision or coverage group. The summary information must be shown at the bottom of page 1 of form SSA-3963.

Subp. 3. **Report when no wages are paid.** Even though no wages are paid in a quarter, the reporting unit must file a report on form SSA-3963 with the notation "no covered wages paid" made on the body of the form.

Subp. 4. **Remittance.** Each quarterly report must be accompanied by a check or checks made payable to "State Treasurer, Contribution Fund," or by a copy of the remittance form prescribed in part 3910.0600, subpart 2, item D. The amount of the remittance must equal the sum of both the required employer contribution of the political subdivision and the required deductions from the earnings of all personnel in the coverage group. In the payment of contributions to the state agency, the reporting unit may disregard a fractional part of a cent unless it amounts to one-half cent or more, in which case it must be increased to the nearest cent.

Subp. 5. **Date due.** The initial quarterly reports and required remittances for the period from the effective date of coverage to the end of the quarter in which any political subdivision becomes covered under the state agreement must be transmitted so as to be received by the state agency on or before the date fixed by the state agency for the filing of these initial reports.

Subp. 6. **Interest on overdue reports.** If any quarterly report is not received by the state agency within the respective established deadlines, interest will be charged to the reporting unit at the rate established in part 3910.0600, subpart 2, item E, on reportable contributions for each month or part of a month from the date due, but the interest charge or penalty shall not be less than \$5.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

History: 8 SR 1479

3910.1400 ANNUAL REPORTS, 1981 AND AFTER.

Subpart 1. **General requirement.** Annual reporting of covered wages is required for calendar year 1981 and for each year thereafter.

Subp. 2. **Coverage.** Each report must be a consolidated report which must include all covered wages paid and reportable under the identification number assigned to the political subdivision. The information must be furnished on forms prescribed by the Social Security Administration.

Subp. 3. **Remittance.** The contribution payments remitted for each calendar year pursuant to part 3910.0500 must equal the social security contributions due on the covered wages included on the report submitted under subpart 2. Any differences must be fully explained, and the additional contributions, if any, must be remitted with the completed report.

Subp. 4. **Date due.** Each report must be received by the state agency not later than January 31 following the year for which the report is made. Reports and contribution payments that have not been prepared in accordance with state agency rules and instructions are unacceptable and are subject to the penalties imposed by this chapter.

Subp. 5. **Penalties.** Wage reports received after the established due date are delinquent. To cover the additional administrative costs, a penalty of \$5 for the first day of the delinquent

cy and \$1 for each additional day that the report is delinquent will be assessed against the reporting unit.

Subp. 6. **Summary data.** In addition to the wage reports required by subparts 1 to 5, quarterly summary data as prescribed by federal social security regulations must be submitted in accordance with state agency instructions.

Subp. 7. **Combined wages from several employees.** Where an employee performs services during a calendar year for the state and one or more political subdivisions or for two or more political subdivisions, the wages paid in any calendar year to the employee by the state and each political subdivision not in excess of the maximum reportable wages shall be reported by the state and each political subdivision, with the following exception: where the state of Minnesota pays the matching employer social security contributions tax, such as for teachers in Minnesota public schools, then only the maximum reportable wages paid to such individual in the aggregate are subject to the social security tax and reported as wages.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.1500 ADJUSTMENT REPORTS.

If the reporting unit determines that a wage report or a previously submitted adjustment report was in error, the unit shall complete an adjustment report, currently called "State's Report of Adjustments," form SSA-3964, and shall forward the original and one copy to the state agency. The following errors require that the adjustment report be completed: wages omitted from the report, not enough wages reported, excessive wages reported, wages reported in excess of the maximum reportable wages, wages shown on report for the wrong period, and wages reported for the wrong person.

The adjustment report must be submitted before the expiration of the time limitations established by the federal statute of limitations set forth in the federal Social Security Act, United States Code, title 42, sections 418 (q) and (r). The reporting unit is liable for the payment of interest on any adjustment report which is determined by the federal government to be delinquent.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.1600 RECORDS.

Subpart 1. **General requirement.** Every political subdivision shall keep accurate records of all wages, whether in cash or in a medium other than cash, paid or available for payment to employees of the political subdivision.

Subp. 2. **Forms and accounting systems.** Each political subdivision shall use forms and systems of accounting that will enable the state agency, the state agency's authorized representatives, or the agents of the secretary of health and human services to ascertain whether the social security taxes for which the political subdivision or coverage group is liable are correctly computed and paid.

Subp. 3. **Contents of records.** The records must show with respect to each employee:

A. the name, address, and account number of the employee and any additional information required by this chapter when the employee does not show his or her social security account number card;

B. the date of each wage payment, the total amount, including any sum withheld from the total as contribution or for any other reason, and the period of services covered by the payment;

C. the amount of the wage payment which constitutes wages subject to tax; and

D. the amount of employee's contributions withheld or collected with respect to each total wage payment, and the date collected if other than the time when the payment was made.

If the total wages in item B and the amount of the wage payment which is subject to tax in item C are not equal, the reason for the difference must be made a matter of record.

Political subdivisions shall keep accurate records of the details of each adjustment or settlement made under any state agency instructions or rules or federal regulations.

Subp. 4. **Copies of documents.** A political subdivision shall keep a copy of any return, report, schedule, statement, or any other documents as a part of its records.

Subp. 5. **Records open for inspection.** All records required by this chapter and federal regulations must be kept at a convenient and safe location accessible to representatives of the secretary of health and human services and of the state agency. The records must at all times be open for inspection by these officials.

Subp. 6. **Retention of records.** All records required by this chapter and federal regulations must be kept for at least four years after the date when the contributions listed in the records became due or the date when the contributions were paid, whichever is later. Records required in part 3910.0500, subpart 4 must be kept for at least four years after the date when the claim is filed. Records must not be destroyed or otherwise disposed of, even after the lapse of the four years, without the written consent required under Minnesota Statutes, section 138.17.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*

3910.1700 ADMINISTRATIVE COSTS.

Each department or agency of the state and each political subdivision included in the state agreement is liable for a pro rata share of the costs of administering Minnesota Statutes, chapter 355 as certified by the state agency. The amounts certified must be based upon the social security contribution tax paid or payable on wages paid to employees of the political subdivisions or coverage groups coming within the provisions of Minnesota Statutes, chapter 355. In addition to the ordinary reimbursable expenses, the state agency may charge a political subdivision for any extraordinary costs of administration relating to matters affecting that particular political subdivision.

Notwithstanding the above provisions for determining the pro rata charges, there is a minimum pro rata charge of \$5 for each reporting unit that reports wages for any person during the period involved. The amounts certified are due and payable upon notice from the state agency, and all checks must be payable to State Treasurer, State Agency Revolving Fund.

Statutory Authority: *MS s 43A.04 subd 3; 355.05*