§ 581. Experience rating. 1. Meaning of terms. As used in this section:

(a) "Computation date" means December thirty-first of any year.

(b) "Payroll year" means the period beginning on October first of a year and ending on September thirtieth of the next following year.

(c) "Qualified employer" means any employer whose account reflects his or her experience with respect to unemployment throughout not less than the four consecutive completed calendar quarters ending on the computation date and who has paid some remuneration in the payroll year preceding the computation date and filed all contribution returns prescribed by the commissioner for the three payroll years preceding the computation date on or before such date, or has had an amount of contributions due and/or an amount of wages paid determined by the commissioner pursuant to section five hundred seventy-one of this article. If an employer has ceased to be liable for contributions and the employer's account balance is not subject to transfer under the provisions of subdivision four of this section, such account balance shall be transferred to the general account on the computation date coinciding with or immediately following the date on which the employer's liability ceased and shall not thereafter be available to such employer in the event that the employer again becomes liable for contributions.

(d) "Employer's account" (1) means an account in the fund reflecting an employer's experience with respect to contribution payments and experience rating charges under this article. The commissioner shall maintain such an account for every employer liable for contributions under this article; but nothing in this article shall be construed to grant any employer or any of his employees prior claims or rights to the amount paid by him into the fund and credited to his employer's account, or to any other account, including the general account, either on his own behalf or on behalf of his employees. All moneys in such fund, from whatever source derived and to whatever account credited, shall be pooled and available to pay benefits to any individual entitled thereto under this article.

(2) Any contributions due but not paid within sixty days of the due date prescribed by regulation of the commissioner shall, when paid, not be credited to an employer's account, but shall be credited to the

general account, unless such payment was made prior to determination and demand by the commissioner pursuant to section five hundred seventy-one of this article.

(3) Payments in lieu of contributions equal to benefits charged in the last three months of a calendar year shall be credited to the employer's account as of the computation date occurring in that year if paid within the time prescribed by the commissioner.

(4) Any employer may at any time make payments to his account in the fund in excess of the requirements of this article. Such payments made during the period from April first through March thirty-first of the following year shall be credited to the employer's account as of the computation date occurring within such period.

(5) For the purpose of determining the size of fund index, all payments in lieu of contributions and voluntary, excess contribution payments made by employers shall be included in the fund balance on the computation date next following the date of payments. Such excess contributions shall be irrevocable and not subject to refund or credit after acceptance by the commissioner and deposit in the fund.

(e) "Experience rating charge" means a debit to an employer's account reflecting a payment of benefits.

(1) Whenever benefits are paid to a claimant, experience rating charges shall be debited to the appropriate account. The commissioner shall notify each employer not more frequently than monthly as to each experience rating charge which is being made to the employer's account. Such notice shall be a determination of the propriety of such charge and of the payment of benefits on which such charge was based.

(2) Benefits payable to any claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of the last employer prior to the filing of a valid original claim in an amount equal to seven times the claimant's benefit rate. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period except as provided below:

(i) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision ten of section five

hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges in an amount equal to the benefit paid for seven weeks of total employment as otherwise provided by this section. Under such circumstances, benefits paid shall be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision ten of section five hundred ninety of this article.

(ii) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision eleven of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges in an amount equal to the benefit paid for seven weeks of total employment as otherwise provided by this section. Under such circumstances, benefits paid will be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision eleven of section five hundred ninety of this article. However, in those instances where a claimant was not afforded an opportunity to perform services for the educational institution for the next academic year or term after reasonable assurance was provided, such employer shall be liable for benefit charges as provided for in this paragraph for any retroactive payments made to the claimant.

(iii) In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and such employer is not a base-period employer, payments equaling an amount equal to the benefit paid for seven weeks of total employment as otherwise prescribed by this section shall be charged to the general account. In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and a base-period employer, such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges in an amount equal to the benefit paid for seven weeks of total employment other than those chargeable to the federal government as prescribed above shall be made to the general account.

(iv) In those instances where a combined wage claim is filed pursuant to interstate reciprocal agreements and the claimant's last employer prior to the filing of the claim is an out-of-state employer and such employer is not a base-period employer, benefit payments in an amount equal to the benefit paid for seven weeks of total employment as otherwise prescribed by this section shall be charged to the general account. In those instances where the out-of-state employer is the last employer prior to the filing of the claim for benefits and a base-period employer such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges in an amount equal to the benefit paid for seven weeks of total employment other than those chargeable to the out-of-state employer as prescribed above shall be made to the general account.

(v) In those instances where the last employer prior to the filing of a valid original claim has paid total remuneration to the claimant during the period from the start of the base period used to establish the benefit claim until the date of the claimant's filing of the valid original claim in an amount less than or equal to six times the claimant's benefit rate and the last employer has substantiated such amount to the satisfaction of the commissioner within ten days of the commissioner's original notice of potential charges to such last

employer's account, benefits shall be charged as follows: benefits payable to the claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of such last employer prior to the filing of a valid original claim in an amount equal to the lowest whole number (one, two, three, four, five, or six) times the claimant's benefit rate where the product of such lowest whole number times the claimant's benefit rate is equal to or greater than such total remuneration paid by such last employer to the claimant. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period. Notice of such recalculation of potential charges shall be given to the last employer and each employer of the claimant in the base period used to establish the valid original claim.

(3) An employer's account shall not be charged, and the charges shall instead be made to the general account, for benefits paid to a claimant after the expiration of a period of disqualification from benefits following a final determination that the claimant lost employment with the employer through misconduct or voluntary separation of employment without good cause within the meaning of section five hundred ninety-three of this article and the charges are attributable to remuneration paid during the claimant's base period of employment with such employer prior to the claimant's loss of employment with such employer through misconduct or voluntary separation of employment without good cause, provided, however, that an employer shall not be relieved of charges pursuant to this subparagraph if an employer or its agent fails to submit information resulting in an overpayment pursuant to section five hundred ninety-seven of this article.

(4) An employer's account shall not be charged, and the charges shall instead be made to the general account, for benefits paid to a claimant based on base period employment while the claimant was an incarcerated individual of a correctional institution and enrolled in a work release program, provided that the employment was terminated solely because the incarcerated individual was required to relocate to another area as a condition of parole or the incarcerated individual voluntarily relocated

to another area immediately upon being released or paroled from such correctional institution.

(5) If an employer who employed the claimant in the four weeks immediately preceding the filing of a valid original claim demonstrates that the employer has continuously employed the claimant without significant interruption and substantially to the same extent and in the same manner as during the weeks immediately preceding the filing of a valid original claim in which the claimant was employed by such employer, the account of such employer shall not be charged with benefits paid to such claimant for any weeks of such continuing employment, and such experience rating charges shall be made to the general account. The provisions set forth in the foregoing sentence shall apply with respect to an employer liable for payments in lieu of contributions, but if the secretary of labor of the United States finds that their application to such employer does not meet the requirements of the federal unemployment tax act, such provisions shall not thereafter apply to such employer, unless and until such finding has been set aside pursuant to a final decision issued in accordance with such judicial review proceedings as may be instituted and completed under the provisions of section thirty-three hundred ten of the federal unemployment tax act.

(6) An employer's account shall not be debited to the extent that the federal government reimburses the fund for benefits paid.

If on any computation date an employer's account registers a negative balance, an amount equivalent to the excess of the negative balance over twenty-one per centum of the employer's payroll in the payroll year preceding such date shall be transferred as a charge to the general account, except that this provision shall not apply to any negative balance, or that portion thereof, which results from benefits charged with respect to which the employer is liable for payments in lieu of contributions.

(f) "Employer's account percentage" means the status of an employer's account on any computation date. It is the balance remaining in the account, after contributions have been credited and experience rating charges have been debited to it, stated as percentage of his average payroll for the last five payroll years preceding the computation date

or for all quarters if the employer has been liable for contributions for fewer than twenty-one quarters. Such percentage shall be computed to two decimal places and the remaining fraction if any, disregarded. If, however, the number of consecutive completed calendar quarters ending on the computation date during which the employer has been liable for contributions hereunder is twenty-one or less the employer's account percentage, if it is positive, shall be multiplied by that figure assigned to the employer designated as "employer's benefit equalization factor" which is listed below on the same horizontal line on which the number of quarters of employer liability appears, and the product resulting therefrom shall constitute the employer's account percentage.

Number of quarters of employer liability	Employer's benefit equalization factor
5	3.00
6	2.50
7	2.05
8	1.75
9	1.55
10	1.40
11	1.25
12	1.12
13	1.04
14 through 21	1.00

(g) "Size of fund index" means the lesser of the following two percentages:

(1) the percentage obtained by dividing the moneys in the fund as of a computation date by the total of all payrolls for the payroll year preceding such date; or (2) the percentage obtained by dividing such moneys by the average of the totals of all payrolls for the five consecutive payroll years preceding such date. Such percentage shall be computed to one decimal place and the remaining fraction, if any, disregarded.

(h) "Payroll" means all wages paid by an employer to his employees.

2. Rates of contribution.

(a) Each qualified employer's rate of contribution shall be the percentage shown in the column headed by the size of the fund index as

of the computation date and on the same line with his or her negative or positive employer's account percentage, except that if within the three payroll years preceding the computation date any part of a negative balance has been transferred from any employer's account as a charge to the general account pursuant to the provisions of paragraph (e) of subdivision one of this section such employer's rate of contribution shall be the maximum contribution rate as shown in the column headed by the size of fund index;

	Size of Fund Index										
Employer's Account Percentage	Less Than 0%	0% but less than 0.5%	0.5% but less than 1.0%	1.0% but less than 1.5%	1.5% but less than 2.0%	2.0% but less than 2.5%	2.5% but less than 3.0%	3.0% but less than 3.5%	3.5% but less than 4.0%	4.0% but less than 4.5%	4.5% but less than 5.0%	5.0% or more
Negative 21.0% or more	8.90	8.70	8.50	8.30	8.10	7.30	6.90	6.50	6.20	6.10	6.00	5.90
20.5% or more but less than 21.0%	8.80	8.60	8.40	8.20	8.00	7.20	6.80	6.40	6.10	6.00	5.90	5.80
20.0% or more but less than 20.5%	8.70	8.50	8.30	8.10	7.90	7.10	6.70	6.30	6.00	5.90	5.80	5.70
19.5% or more but less than 20.0%	8.60	8.40	8.20	8.00	7.80	7.00	6.60	6.20	5.90	5.80	5.70	5.60
19.0% or more but less than 19.5%	8.50	8.30	8.10	7.90	7.70	6.90	6.50	6.10	5.80	5.70	5.60	5.50
18.5% or more												

but less
than 19.0% 8.40 8.20 8.00 7.80 7.60 6.80 6.40 6.00 5.70 5.60 5.50 5.40
18.0%
or more
but less
than 18.5% 8.30 8.10 7.90 7.70 7.50 6.70 6.30 5.90 5.60 5.50 5.40 5.30
17.5%
or more
but less
than 18.0% 8.20 8.00 7.80 7.60 7.40 6.60 6.20 5.80 5.50 5.40 5.30 5.20
17.0%
or more
but less
than 17.5% 8.10 7.90 7.70 7.50 7.30 6.50 6.10 5.70 5.40 5.30 5.20 5.10
16.5%
or more
but less
than 17.0% 8.00 7.80 7.60 7.40 7.20 6.40 6.00 5.60 5.30 5.20 5.10 5.00
16.0%
or more
but less
than 16.5% 7.90 7.70 7.50 7.30 7.10 6.30 5.90 5.50 5.20 5.10 5.00 4.90
15.5%
or more
but less
than 16.0% 7.80 7.60 7.40 7.20 7.00 6.20 5.80 5.40 5.10 5.00 4.90 4.80
15.0%
or more
but less
than 15.5% 7.70 7.50 7.30 7.10 6.90 6.10 5.70 5.30 5.00 4.90 4.80 4.70
14.5%
or more
but less
than 15.0% 7.60 7.40 7.20 7.00 6.80 6.00 5.60 5.20 4.90 4.80 4.70 4.60
14.0%
or more
but less

than 14.5% 7.50 7.30 7.10 6.90 6.70 5.90 5.50 5.10 4.80 4.70 4.60 4.50
13.5%
or more
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than 14.0% 7.40 7.20 7.00 6.80 6.60 5.80 5.40 5.00 4.70 4.60 4.50 4.40
13.0%
or more
but less
than 13.5% 7.30 7.10 6.90 6.70 6.50 5.70 5.30 4.90 4.60 4.50 4.40 4.30
12.5%
or more
but less
than 13.0% 7.20 7.00 6.80 6.60 6.40 5.60 5.20 4.80 4.50 4.40 4.30 4.20
12.0%
or more
but less
than 12.5% 7.10 6.90 6.70 6.50 6.30 5.50 5.10 4.70 4.40 4.30 4.20 4.10
11.5%
or more
but less
than 12.0% 7.00 6.80 6.60 6.40 6.20 5.40 5.00 4.60 4.30 4.20 4.10 4.00
11.0%
or more
but less
than 11.5% 6.90 6.70 6.50 6.30 6.10 5.30 4.90 4.50 4.20 4.10 4.00 3.90
10.5%
or more
but less
than 11.0% 6.80 6.60 6.40 6.20 6.00 5.20 4.80 4.40 4.10 4.00 3.90 3.80
10.0%
or more
but less
than 10.5% 6.70 6.50 6.30 6.10 5.90 5.10 4.70 4.30 4.00 3.90 3.80 3.70
9.5%
or more
but less
than 10.0% 6.60 6.40 6.20 6.00 5.80 5.00 4.60 4.20 3.90 3.80 3.70 3.60

9.0% or more but less than 9.5%	6.50	6.30	6.10	5.90	5.70	4.90	4.50	4.10	3.80	3.70	3.60	3.50
8.5% or more but less than 9.0%	6.40	6.20	6.00	5.80	5.60	4.80	4.40	4.00	3.70	3.60	3.50	3.40
8.0% or more but less than 8.5%	6.30	6.10	5.90	5.70	5.50	4.70	4.30	3.90	3.60	3.50	3.40	3.30
7.0% or more but less than 8.0%	6.20	6.00	5.80	5.60	5.40	4.60	4.20	3.80	3.50	3.40	3.30	3.20
6.0% or more but less than 7.0%	6.10	5.90	5.70	5.50	5.30	4.50	4.10	3.70	3.40	3.30	3.20	3.10
5.0% or more but less than 6.0%	6.00	5.80	5.60	5.40	5.20	4.40	4.00	3.60	3.30	3.20	3.10	3.00
4.0% or more but less than 5.0%	5.90	5.70	5.50	5.30	5.10	4.30	3.90	3.50	3.20	3.10	3.00	2.90
3.0% or more but less than 4.0%	5.60	5.40	5.20	5.00	4.80	4.20	3.80	3.40	3.10	3.00	2.90	2.80
2.0% or more but less than 3.0%	5.50	5.30	5.10	4.90	4.70	4.10	3.70	3.30	3.00	2.90	2.80	2.70
1.0%												

or more but less than 2.0%	5.40	5.20	5.00	4.80	4.60	4.00	3.60	3.20	2.90	2.80	2.70	2.60
Less than 1.0%	5.20	5.00	4.80	4.60	4.40	3.80	3.40	3.00	2.70	2.60	2.50	2.40
Positive Less than 1.0%	4.10	3.90	3.70	3.50	3.30	2.90	2.50	2.10	1.90	1.80	1.70	1.60
1.0% or more but less than 2.0%	4.00	3.80	3.60	3.40	3.20	2.80	2.40	2.00	1.80	1.70	1.60	1.50
2.0% or more but less than 3.0%	3.90	3.70	3.50	3.30	3.10	2.70	2.30	1.90	1.70	1.60	1.50	1.40
3.0% or more but less than 4.0%	3.80	3.60	3.40	3.20	3.00	2.60	2.20	1.80	1.60	1.50	1.40	1.30
4.0% or more but less than 5.0%	3.70	3.50	3.30	3.10	2.90	2.50	2.10	1.70	1.50	1.40	1.30	1.20
5.0% or more but less than 5.5%	3.60	3.40	3.20	3.00	2.80	2.40	2.00	1.60	1.40	1.30	1.20	1.10
5.5% or more but less than 5.75%	3.50	3.30	3.10	2.90	2.70	2.30	1.90	1.50	1.30	1.20	1.10	1.00
5.75% or more but less than 6.0%	3.40	3.20	3.00	2.80	2.60	2.20	1.80	1.40	1.20	1.10	1.00	0.90
6.0%												

or more but less than 6.25%	3.30	3.10	2.90	2.70	2.50	2.10	1.70	1.30	1.10	1.00	0.90	0.80
6.25% or more but less than 6.5%	3.20	3.00	2.80	2.60	2.40	2.00	1.60	1.20	1.00	0.90	0.80	0.70
6.5% or more but less than 6.75%	3.10	2.90	2.70	2.50	2.30	1.90	1.50	1.10	0.90	0.80	0.70	0.60
6.75% or more but less than 7.0%	3.00	2.80	2.60	2.40	2.20	1.80	1.40	1.00	0.80	0.70	0.60	0.50
7.0% or more but less than 7.25%	2.90	2.70	2.50	2.30	2.10	1.70	1.30	0.90	0.70	0.60	0.50	0.40
7.25% or more but less than 7.5%	2.80	2.60	2.40	2.20	2.00	1.60	1.20	0.80	0.60	0.50	0.40	0.30
7.5% or more but less than 7.75%	2.70	2.50	2.30	2.10	1.90	1.50	1.10	0.70	0.50	0.40	0.30	0.20
7.75% or more but less than 8.0%	2.60	2.40	2.20	2.00	1.80	1.40	1.00	0.60	0.40	0.30	0.20	0.10
8.0% or more but less than 8.25%	2.50	2.30	2.10	1.90	1.70	1.30	0.90	0.50	0.30	0.20	0.10	0.00
8.25% or more												

but less than 8.5%	2.40	2.20	2.00	1.80	1.60	1.20	0.80	0.40	0.20	0.10	0.00	0.00
8.5% or more but less than 8.75%	2.30	2.10	1.90	1.70	1.50	1.10	0.70	0.30	0.10	0.00	0.00	0.00
8.75% or more but less than 9.0%	2.20	2.00	1.80	1.60	1.40	1.00	0.60	0.20	0.00	0.00	0.00	0.00
9.0% or more but less than 9.25%	2.10	1.90	1.70	1.50	1.30	0.90	0.50	0.10	0.00	0.00	0.00	0.00
9.25% or more but less than 9.5%	2.00	1.80	1.60	1.40	1.20	0.80	0.40	0.00	0.00	0.00	0.00	0.00
9.5% or more but less than 9.75%	1.90	1.70	1.50	1.30	1.10	0.70	0.30	0.00	0.00	0.00	0.00	0.00
9.75% or more but less than 10.0%	1.80	1.60	1.40	1.20	1.00	0.60	0.20	0.00	0.00	0.00	0.00	0.00
10.0% or more but less than 10.25%	1.70	1.50	1.30	1.10	0.90	0.50	0.10	0.00	0.00	0.00	0.00	0.00
10.25% or more but less than 10.5%	1.60	1.40	1.20	1.00	0.80	0.40	0.00	0.00	0.00	0.00	0.00	0.00
10.5% or more	1.50	1.30	1.10	0.90	0.70	0.30	0.00	0.00	0.00	0.00	0.00	0.00

(aa) (i) If a qualified employer, with a minimum of seventeen quarters

of liability, has an account percentage which is negative on any computation date and the total wages paid by such employer in the preceding payroll year, is greater than or equal to eighty percent of the previous three payroll year's average total wages paid by the employer, then such employer's account percentage for the subsequent year shall be improved by four percentage points for purposes of determining the employer's rate of contribution. However, in no event shall the resulting rate of contribution after such adjustment be less than 6.1 percent. Such adjustment to the employer's account percentage shall be applicable only to the employer's current rate of contribution and the application of such adjustment shall be redetermined annually.

(ii) The terms "qualified employer", "employer's account percentage", "computation date", "wages", "payroll year" and "rate of contribution" shall have the meaning prescribed pursuant to article eighteen of this chapter.

(b) Penalty for failure to file required returns. (1) In the case of a failure by an employer to file a quarterly combined withholding wage reporting and unemployment insurance return required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law, there shall be imposed a penalty of five percent of the amount of contributions required to be shown on such return (including the amount of any assessment or modification made pursuant to this section) if the failure is for not more than one month with an additional five percent penalty for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(2) The penalty provided for failure to file a return under this paragraph shall not be less than one hundred dollars for each occurrence.

(3) For purposes of this paragraph, the amount of contributions required to be shown on such return shall be reduced by the amount of any part of the contributions due which is paid on or before the date the return is required to be filed and by the amount of any credit to the contributions due which may be claimed upon such return.

(4) For other penalties relating to failure to file the quarterly combined withholding, wage reporting and unemployment insurance return, see paragraph one of subsection (v) of section six hundred eighty-five of the tax law.

(5) The penalties imposed and collected pursuant to this paragraph shall be credited to the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article.

(c) The rate for any employer who has not qualified under the provisions of paragraph (c) of subdivision one of this section solely because he has not been liable for contributions during at least the five completed calendar quarters ending on the computation date, or because he has not paid any remuneration in the payroll year preceding the computation date, shall be equal to the rate which applies pursuant to paragraph (a) of this subdivision to an employer who has a positive account percentage of less than one percentum, except that the rate for such employer shall in no event exceed three and four-tenths per centum.

(d) The rates established in accordance with the provisions of this subdivision shall apply with respect to wages paid in the four consecutive calendar quarters immediately following the computation date.

3. Joint accounts. Any two or more qualified employers engaged in the same or a related trade, occupation, profession or enterprise, or having a common financial interest may apply to the commissioner to establish a joint account or to merge their several individual accounts in a joint account. The commissioner shall prescribe rules and regulations for the establishment, maintenance and dissolution of joint accounts. A joint account shall be maintained as if it constituted a single employer's account. Rules established by the commissioner pursuant to the provisions of this subdivision shall be promulgated only after notice and public hearing.

4. Transfers of accounts. (a) Where an employer subsequent to July first, nineteen hundred fifty-one, transfers his or its organization, trade or business in whole or in part, the transferee shall take over and continue the employer's account, including its balance and all other aspects of its experience under this article, in proportion to the payroll or employees assignable to the transferred organization, trade or business determined for the purpose of this article by the commissioner. The account taken over by the transferee shall remain chargeable with respect to benefits based on employment in the

transferred organization, trade or business, and all such employment shall be deemed employment performed for the transferee.

(b) The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the preceding calendar year, and such rates shall apply from the date of the transfer to the end of the calendar year in which the transfer occurred. The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year following the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the same calendar year. The commissioner shall allocate to the transferee's account for each period in question the proportion of the transferring employer's payroll, which the commissioner determines to be properly assignable to the organization, trade or business transferred.

(c) No transfer shall be deemed to have occurred if the commissioner on his own motion or on application of any interested party finds that all of the following conditions exist:

(1) the transferee has not assumed any of the transferring employer's obligations, and

(2) the transferee has not acquired any of the transferring employer's good will, and

(3) the transferee has not continued or resumed the business of the transferring employer either in the same establishment or elsewhere, and

(4) the transferee has not employed substantially the same employees as those the transferring employer had employed in connection with the organization, trade, business, or part thereof transferred.

(d) No transfer shall be deemed to have occurred unless either the transferring employer or the transferee has given notice of the transfer to the commissioner prior to the termination of the calendar year following the calendar year in which the transfer occurred.

5. Interstate transfer of experience. An employer who transfers all or a segregable part of his operations from another state to this state shall be deemed to be a qualified employer within the meaning of this section as of the computation date next following the transfer,

provided:

(a) that he has paid wages subject to the federal unemployment tax act for eighteen consecutive completed calendar quarters immediately preceding the computation date;

(b) that he notifies the commissioner of the transfer of operations prior to the computation date;

(c) that he certifies to the commissioner all information with respect to the transferred operations which the commissioner determines to be necessary; and

(d) that he certifies to the commissioner at such times as the commissioner prescribes all information which the commissioner determines to be necessary with respect to benefits paid subsequent to the transfer and prior to each computation date on the basis of wages paid in such other state.

Wages, remuneration, contributions and benefits resulting in experience rating charges in connection with the transferred operations shall be deemed to have been paid in this state for the purposes of this section.

In computing such employer's balance applicable to the transferred operations, the commissioner shall consider only the fourteen most recently elapsed calendar quarters prior to the computation date. Any balance set up under this subdivision shall be debited to the general account; and benefits subsequently paid based on wages paid in such other state shall be charged to the employer's account and credited to the general account.

6. Corrections and modifications. Corrections or modifications of an employer's payroll, experience rating charges, or any other pertinent factor shall not be taken into account for the purpose of a determination or redetermination of the employer's contribution rate, unless such corrections or modifications were established on or before the computation date; except that they shall be taken into account whenever established if the employer filed false returns with intent to defraud or, with respect to payroll, failed to file returns prior to the computation date such that an amount of contributions due from such

employer and/or an amount of wages paid by such employer was required to be determined by the commissioner pursuant to section five hundred seventy-one of this article and such corrections or modifications result in a rate higher than the contribution rate determined by the commissioner or, with respect to experience rating charges, if they result from a referee, appeal board, or court decision.

7. Certain transfers. Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(1) If an employer transfers its organization, trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is at least ten percent common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred organization, trade or business shall be transferred to the employer to whom such organization, trade or business is so transferred. In addition to the provisions of this subdivision, the transfer provisions of paragraphs (a), (b) and (d) of subdivision four of this section shall apply to such transfers. For purposes of this subdivision "organization, trade or business" shall include the employer's workforce.

(2) If, following a transfer of experience under subparagraph one of this paragraph, the commissioner determines that a substantial purpose of the transfer of the organization, trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(b) Whenever a person is not an employer liable for contributions under this article at the time it acquires the organization, trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the commissioner finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned a rate in accordance with paragraph (c) of subdivision two of this section. In determining whether the organization, trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall evaluate factors

that include, but are not limited to the following:

(1) the cost of acquiring the organization, trade or business;

(2) whether the person continued the business enterprise of the acquired business;

(3) how long such business enterprise was continued; or

(4) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(1) If a person knowingly violates or attempts to violate paragraphs (a) or (b) of this subdivision, then such person shall be liable for the greater penalty of ten percent of such person's total taxable wages in the last completed payroll year or ten thousand dollars. Any such penalty shall be deposited in the control fund established under section five hundred fifty-two-b of this article.

(2) If a person knowingly advises another person to violate or attempt to violate paragraph (a) or (b) of this subdivision, then such advisor shall be subject to a civil penalty of ten thousand dollars. Any such penalty shall be deposited in the control fund established under section five hundred fifty-two-b of this article.

(3) For purposes of this subdivision, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(4) For purposes of this subdivision, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or wilful nondisclosure.

(5) In addition to the penalties imposed by subparagraphs one and two of this paragraph, any violation of this subdivision shall be a class E felony and is punishable by a term of imprisonment as prescribed in section 70.00 of the penal law.

(d) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this subdivision.

(e) For purposes of this subdivision the term "person" has the meaning given such term by section 7701 (a)(1) of the Internal Revenue Code of 1986, and shall also include an employer as defined in this article.