

Part IV - Items of General Interest

Guidance to federally recognized Indian tribal governments about their Federal Unemployment Tax Act obligations for 2000

Announcement 2001-16

This announcement provides guidance to federally recognized Indian tribal governments, including any subdivision, subsidiary, or wholly-owned business enterprise, about their Federal Unemployment Tax Act (FUTA) obligations for 2000. The announcement is being made because the recent enactment of Section 166 of the Community Renewal Tax Relief Act of 2000 (H.R. 5662, incorporated in H.R. 4577, the Consolidated Appropriations Act, 2001) (Pub. L. No. 106-554, 114 Stat. 2763) changed how FUTA applies to Indian tribal governments.

For services rendered after December 20, 2000, federally recognized Indian tribal governments are exempt from FUTA. Instead, an Indian tribal government may elect to make contributions to the State unemployment fund as if services by its employees were employment under FUTA, or it may make payments in lieu of the contributions in amounts equal to the unemployment benefits attributable under the State law to such service; and Indian tribal governments may make separate elections for any subdivision, subsidiary, or business enterprise wholly owned by it.

The new law also includes a transition rule that may eliminate an Indian tribal government's obligation to pay FUTA taxes for certain services rendered during 2000, but before December 21, of that year. Under the transition rule, an Indian tribal government has no FUTA tax liability for services performed by its employees if the following conditions are satisfied: (1) the service was performed before December 21, 2000; (2) the tax imposed under FUTA was not paid; and (3) the Indian tribal government reimburses a State unemployment fund for unemployment benefits actually paid for services performed before December 21, 2000.

The due date for Form 940, for services rendered in 2000, is January 31, 2001 and FUTA taxes deposited during 2000 generally are deemed not paid until that date. Therefore, FUTA tax deposits for services performed from January 1, 2000 through December 20, 2000, were not paid by December 21, 2000, and are therefore not considered paid for purposes of the transition rule. Note, however, that FUTA tax liability paid before the enactment of the Community Renewal Tax Relief Act of 2000 (i.e., for years before 2000), may not be refunded under the terms of the law. Therefore, the transition rule options described in this announcement apply to Form 940 only for year 2000.

Because this law was enacted in December of 2000, many Indian tribal governments may not have had time to consider the options available and may not know how they plan to proceed by January 31, 2001, under this new law. Furthermore, the State

governments have not yet had time to establish procedures for the reimbursement of the State unemployment funds.

Indian tribal governments may use one of the following options in filing Form 940 for 2000:

OPTION 1

If the Indian tribal government knows before January 31, 2001, that it wishes to use the transition rule for all of its 2000 FUTA liabilities and will satisfy the terms of that rule, including the reimbursement of the State, it may file a Form 940 filled out in the following way:

1. Write across the top of the Form 940: Announcement 2001-16.
2. Check the box stating that it is not required to file Form 940 in the future.
3. Total payments made in 2000 for services rendered for the year 2000, should be entered on line 1 of Part I of Form 940.
4. The amount entered on line 1 of Part I should also be entered on line 2.
5. Line 2 also requests an explanation about why the amounts are exempt. The Indian tribal government should state: Announcement 2001-16.
6. On line 5, enter zero as FUTA tax liability.
7. On line 7 of Part II, enter zero.
8. On line 8 of Part II, enter the total FUTA tax deposited for the year.
9. On line 10 of Part II, enter the amount from line 8.

OPTION 2

If the Indian tribal government has not determined how it wishes to proceed concerning the transition rule, it should file the Form 940 for 2000 claiming exemption only for services performed after December 20, 2000. The Indian tribal government may later use an amended return for 2000 to exercise its option to use the transition rule and receive a refund for amounts deposited. If the Indian tribal government chooses to amend its return, it should file another Form 940 and check the box that indicates it is an amended return. It should follow the directions in Option 1 when it prepares this amended Form 940. These amended Forms 940 for 2000 must be filed no later than January 31, 2004.

In the alternative, recognizing the limited period of time the Indian tribal government has to react to the new law, it may file the Form 940 for 2000 as if the new law had not been enacted. The Indian tribal government should later use an amended return for 2000 to receive a refund for amounts deposited for services after December 21, 2000, but before January 1, 2001, even if the Indian tribal government decides not to use the transition rule.

TRANSITION RULE ELECTIONS FOR SUBDIVISIONS, SUBSIDIARIES, OR WHOLLY-OWNED BUSINESS ENTERPRISES

An Indian tribal government may choose to apply the transition rule separately to each subdivision, subsidiary, or wholly-owned business enterprise. For example, the Indian tribal government could elect to reimburse the State unemployment funds for one wholly-owned business enterprise, and receive a refund of amounts deposited with respect to that wholly-owned business enterprise, but not make the election for another wholly-owned business enterprise. If the Indian tribal government decides to apply the transition rule differently to different subdivisions, subsidiaries, or wholly-owned business enterprises, it may use either Option 1 or Option 2, but should enter on line 2 of Part I ONLY those amounts attributable to subdivisions, subsidiaries, or wholly-owned business enterprises to which its transition rule election applies, then complete the calculations by following the form instructions.

For further information regarding this announcement contact the Tax Exempt and Government Entities Customer Account Services call site at 1-877-829-5500 (toll-free).