

Florida Department of Revenue
Tax Information Publication

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UNEMPLOYMENT TAX
"SUTA" DUMPING

The 2005 Florida Legislature passed a bill to crack down on tactics used by some employers to reduce unemployment tax liabilities through schemes known as "State Unemployment Tax Act (SUTA) Dumping".

States nationwide have experienced decreased balances in their unemployment insurance trust fund from reduced tax collections as a result of schemes to avoid tax obligations and shift the unemployment costs attributable to their businesses onto all employers whose workers are insured under the Unemployment Compensation Program. Under these schemes, referred to as SUTA dumping, employers move their employees in and out of related businesses to obtain a lower tax rate or establish shell businesses in which to divert their company's payroll, thereby avoiding the payment of millions of dollars to the Unemployment Trust Fund. The burden of paying higher rates to keep the fund solvent is then shifted to all other employers.

In August, 2004, the federal government passed Public Law No: 108-295 which required states to pass laws to curb SUTA dumping. SUTA dumping has involved mergers, acquisitions or restructuring schemes, especially those that shift workforce or payroll. Under Florida's new law, which becomes effective January 1, 2006, tax evasion using SUTA dumping tactics will now be subject to serious sanctions, including criminal prosecution.

The new law specifically provides that when an employer transfers its trade or business, or a portion of the business, to another employer and at the time of the transfer there is any common ownership, management, or control between the businesses, the unemployment experience of the transferred business must be transferred to the employer to whom the business was transferred. In addition, when a determination is made that a substantial purpose of the transfer of a trade or business was to obtain a reduced rate of contributions, the experience of the employers involved must be combined into a single account, and a single rate will be assigned to the account.

The new law also prohibits the transfer of the unemployment experience of an acquired business when a determination is made that a person, who is not an employer, acquired a business primarily for the purpose of obtaining a lower rate of contribution. The law requires the Department to consider the following factors when determining whether the person was primarily attempting to acquire a lower rate of contribution:

>whether the person continued the business enterprise of the acquired business;

>the length of time the business enterprise of the acquired business was continued; and

>whether a substantial number of new employees were hired for the performance of duties unrelated to the business activity of the acquired business.

The new law also states that if a person knowingly violates or attempts to violate the provisions of law that apply to the assignment of rates and to transfers of unemployment experience, or if a person knowingly advises another person to violate the law, the person will be subject to the following penalties:

1. If the person is an employer, the employer will be assigned the highest rate assignable under Chapter 443, Florida Statutes (F.S.), for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following this rate year. However, if the person's business is already at the highest rate for any year, or if the amount of increase in the person's rate would be less than two percent for such year, then a penalty rate of contribution of two percent of taxable wages will be imposed for such year.

2. If the person is not an employer, the person will be subject to a civil penalty of not more than \$5,000.

In addition, any person who violates any of the provisions related to SUTA dumping commits a felony of the third degree, punishable by imprisonment for up to five years, and a fine of up to \$5,000.

References: Chapters 2005-187 and 2005-280, Laws of Florida.

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit our Internet site at www.myflorida.com/dor. Or call Taxpayer Services, 8:00 a.m., to 7:00 p.m., ET, Monday through Friday, excluding holidays, at 800-482-8293 or 850-488-6800.

Persons with hearing or speech impairments may call our TDD at 800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, 1379 Blountstown Highway, Tallahassee, FL 32304-2716.