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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
UNEMPLOYMENT INSURANCE AGENCY
SHARON MOFFETT-MASSEY, DIRECTOR

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SUTA Dumping Annual Report

May 28, 2014

The Honorable Roger Kahn, Chair
Senate Appropriations Committee
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The Honorable Glenn Anderson, Minority Vice Chair
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The Honorable Mark Jansen, Chair
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The Honorable John Proos, Majority Vice Chair
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The Honorable Bert Johnson, Minority Vice Chair
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The Honorable Mike Kowall, Chair
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The Honorable Dave Hildenbrand, Majority Vice Chair
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The Honorable Virgil Smith, Minority Vice Chair
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The Honorable Joe Haveman, Chair
House Committee on Appropriations
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The Honorable Al Pscholka, Majority Vice Chair
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The Honorable Rashida Tlaib, Minority Vice Chair
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The Honorable Anthony Forlini, Chair
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The Honorable Al Pscholka, Majority Vice Chair
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The Honorable Pam Faris, Minority Vice Chair
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The Honorable Frank Foster, Chair
House Committee on Commerce
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The Honorable Dale Zorn, Majority Vice Chair
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The Honorable Jon Switalski, Minority Vice Chair
House Committee on Commerce
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Enclosed, you will find the 2013 report on SUTA Dumping. This report is being provided to you in accordance with statutory language in the Michigan Employment Security Act.

Respectfully,

A handwritten signature in black ink, reading "Sharon Moffett-Massey". The signature is fluid and cursive, with a large, stylized initial 'S'.

Sharon Moffett-Massey, Unemployment Insurance Agency Director

cc: Kit Murphy
Robin Norton

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
UNEMPLOYMENT INSURANCE AGENCY

State Unemployment Tax Act (SUTA) Dumping
Annual Report
For Calendar Year 2013

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As mandated by Section 22b of the Michigan Employment Security Act, the Unemployment Insurance Agency (Agency) shall provide an annual written report to the chairpersons of the standing committees and the appropriations subcommittees of the house and senate having jurisdiction over legislation pertaining to unemployment compensations. This report shall include all of the following information in a form that does not identify individual employers:

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SUTA Dumping

Employer Communication and Education Procedure

(i) A. General Information

Through education, detection and enforcement, the Agency seeks to reduce SUTA Dumping. The Agency takes the following steps to communicate with and educate the employer community on the amendments to the Michigan Employment Security (MES) Act and State Unemployment Tax Act (SUTA) Dumping:

1. Communication with Employer Community

The Agency has developed informational materials to educate employers regarding amendments to the Michigan Employment Security (MES) Act and State Unemployment Tax Act (SUTA) Dumping and mails the information to employers. The information is distributed through the Quarterly Tax Report mailings, special mailings, meetings and educational forums with the employer community.

2. UIA Website

The Agency maintains a section devoted to SUTA Dumping education on its website (www.michigan.gov/uia). The website includes: state legislation, federal information, *Employer Advisor* articles, Frequently Asked Questions, informational letters sent to all employers, a webcast and news releases related to SUTA Dumping, a fact sheet on SUTA Dumping.

3. Employer Advisor

To provide on-going communication regarding SUTA Dumping, the Agency publishes articles in the *Employer Advisor* which is an online quarterly newsletter made available to the approximately 200,000 active employers in the state of Michigan.

4. UIA Outreach

The Agency conducts Employer Seminars throughout the state which cover a variety of unemployment topics, including issues related to SUTA Dumping.

5. Employer Handbook

The Agency's *Employer Handbook* is an online comprehensive guide for employers. It is revised as necessary, to include updated information on the SUTA Dumping provisions of the Michigan Employment Security (MES) Act and additional information about SUTA Dumping and other topics.

6. Updated Forms

Treasury Form 518, "Michigan Business Taxes Registration Booklet," is available in electronic format (http://www.michigan.gov/documents/518_3620_7.pdf). UIA Schedule B which must be used to disclose possible transfer of business has been made available to employers as a stand-alone form and is available on the Agency's website (www.michigan.gov/uia). Successorship may also now be reported using the Agency's online services known as MiWAM (Michigan Web Account Manager). MiWAM allows for the electronic posting of most Agency forms.

Eventually all reporting will be done electronically. The development of online forms will allow most agency business to be conducted using online systems and electronic forms.

7. Quality Assurance

The Agency conducts quality assurance reviews throughout the process to improve communication with the employer community and solicit recommendations to improve service to the Agency's customers.

8. Electronic Filing

The Agency now requires electronic filing of quarterly tax reports for most employers. This allows the Agency to limit filing of reports contrary to Agency decisions by restricting access to only those recognized employer accounts.

SUTA Dumping

Detection and Enforcement Procedure

- 1) Referrals for possible SUTA Dumping are received from the Discoveries function within the MiDAS system; external sources such as employers, claimants, and other states; and internal sources, including the Bureau of Labor Market Information and Strategic Initiatives (LMI), Attorney General's Office, other state agencies, and the Unemployment Insurance Agency's (UIA) Claimant Customer Relations, Office of Employer Ombudsman, Problem Resolution Offices, Remote Initial Claims Centers (RICCs) and Benefit Fraud Detection Unit.
- 2) Based on Agency review of the referrals, a decision is made as to whether a SUTA Dumping investigation is needed.
- 3) If a SUTA Dumping investigation is considered necessary, a referral is forwarded to the UIA's SUTA Investigators for investigation.
- 4) The SUTA investigators then obtain documentation related to the case. Documentation may include internal records, ownership information, business activity information, asset and payroll transfers, tax filings registration reports and other correspondence obtained by the Agency. Websites and Corporations filings are also reviewed.
- 5) Documentation is reviewed by the auditor/investigator assigned. If needed, an audit and/or investigation is scheduled and an audit letter is mailed to the employer confirming the audit date, time and location. Enclosed with the letter is a brochure that explains the audit process and the records needed for the audit. An audit will reveal if the payroll reporting is proper. A SUTA Dumping investigation will reveal if proper employer liability is established. If an audit is completed, it must be made clear that the audit does not provide information regarding the employer's liability or possible SUTA Dumping. Audits and investigations provide separate and distinct information.
- 6) The auditor may also conduct a financial audit at either the company's business location or at the office of its financial advisor. A financial audit is conducted in compliance with Chapter Seven of the US Department of Labor Tax Performance System as mandated by federal law. Typically, a financial audit will reveal only if the employer is properly recording its payroll on the company subject to audit. Financial audits do not disclose proper or improper transfers of business or improper use of multiple accounts.
- 7) After the audit is complete, a closing conference is held with the employer at which time the auditor will provide a letter that outlines the steps for the remainder of the process. This conference deals only with an audit, not with any SUTA investigation.

- 8) The results of the audit and/or investigation are reviewed for quality and completeness.
- 9) The information is sent to the SUTA section manager via the automated case process with a recommended action from the auditor or investigator. The SUTA section manager will review the auditor's or investigator's findings and recommendation. If the SUTA reviewer agrees, the SUTA reviewer forwards the recommendation of action and reassigns the case to the tax office for issuance of a written Determination. If additional information is needed to issue a Determination, the case is returned to the auditor or investigator to collect the information needed.
- 10) The Agency prepares a Determination(s) that details its decision which is mailed to the employer's address of record.
- 11) By law, the employer has 30 days to file a written protest to the Determination. Upon issuance of a Determination, the tax underpayment, interest and, as appropriate, penalty will be posted to the employer's account.
- 12) If the employer protests the Determination in a timely manner, the written information in the protest will be considered. Following a review of the protest, a Redetermination is issued which affirms, modifies, or reverses the Determination. An employer may appeal the Redetermination to the Michigan Administrative Hearings System (MAHS) for a full evidentiary hearing before an Administrative Law Judge (ALJ). If the employer requests an appeal hearing, the appeal is forwarded to MAHS. MAHS will obtain the necessary jurisdictional documents and schedule a hearing.
- 13) The decision of the Administrative Law Judge may be appealed by the aggrieved party to the Michigan Compensation Appellate Commission (MCAC) or upon stipulation by the employer and the Agency, the matter may be appealed directly to circuit court.
- 14) If either party believes that the decision of the MCAC is incorrect, the case may be appealed to the circuit court for review. A decision of the circuit court may be further appealed, by leave, to the Michigan Court of Appeals, and ultimately, by leave, to the Michigan Supreme Court.
- 15) Upon issuance of a Determination or when a settlement has been reached, if applicable, adjustments will be made to the employer account. The employer has an option of entering into a payment plan.

If at any time the employer refuses or fails to comply with the Agency's audit or requests for information (pursuant to Section 9 of the MES Act and Rule 190 of the Administrative Rules), the following steps may occur:

- a. The Auditor contacts the employer (via letter, email, phone call, or in person) and requests additional information.
- b. If the information is not provided within five business days, a letter is mailed requesting the information within ten business days.
- c. If the employer still fails to comply, a subpoena is issued (pursuant to Section 9 of the MES Act).
- d. If the employer does not comply with the subpoena, the Labor Division, Unemployment Unit of the Office of Attorney General, may upon request, issue a demand letter citing the subpoena and requiring the requested information due within ten business days.
- e. If the employer does not comply with the demand letter, the Agency will issue its decisions based on the best available information.

(ii) The number of SUTA Dumping investigations opened during the year.

As of December 31, 2013, there have been 54 SUTA Dumping investigations opened since January 1, 2013, citing possible violations of Sections 22, 22b, 54b, and/or Section 54(b) of the Michigan Employment Security (MES) Act.

(iii) The average length of time to resolve a SUTA Dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year.

The statistics listed below are for all SUTA investigations reported in the Midas computer system. Some older historic cases are not included.

Our automated tracking system indicates, there have been 14 investigations pending for more than 6 months but less than 1 year; and 55 investigations pending for more than 1 year.

Please note that in previous calculations the length of time to resolve a SUTA Dumping investigation, the beginning of the period is the date the investigation began, and the end of the period is the date the Determination was issued, or the date when it is concluded that no SUTA Dumping has occurred. An appeal process is available to the parties pursuant to the MES Act, and includes both administrative and judicial appeal process rights and has not previously been factored into this timeline.

- (iv) The number of cases brought before an administrative law judge or the board of review and the Agency's success rate in those cases.

There have been eleven cases brought before an Administrative Law Judge, The Michigan Compensation Appellate Commission (formerly the MES Board of Review) or a Circuit Court in 2013. Nine of the cases progressed to the Administrative Law Judge (ALJ) while one of the decisions was received from the Michigan Compensation Appellate Commission (MCAC) and one from the Circuit Court. The Circuit Court case is considered favorable for this question although it resulted in an arbitrated settlement. The MCAC decision was favorable to the Agency. Of the nine cases brought before the ALJ, five had decisions still pending at year end. One resulted in settlement without an ALJ decision but is considered favorable for purposes of this question. One case was rescheduled to the following year. Two ALJ decisions were issued, one favorable and one unfavorable. If we consider the settlements to be favorable, five cases were resolved and four of those had favorable decisions resulting in an 80% success rate.

- (v) The amount of money recovered as a result of implementing the provisions of this section.

During calendar year 2013, the Agency has recovered and returned to the Trust Fund \$6,655,461.42.

- (vi) The amount of the balance or deficit in the unemployment compensation fund.

As of December 31, 2013, the balance for Michigan's Unemployment Insurance Agency's Trust Fund is surplus of \$1.5 billion.

- (vii) The estimated fiscal impact of SUTA Dumping on the unemployment compensation fund balance and the factual basis for the estimate.

The Unemployment Insurance Agency estimates the fiscal impact of SUTA Dumping on the unemployment compensation fund balance for the calendar year 2014 will be somewhat less than the amount collected in 2013 as there was an unusually large settlement agreement reached in 2013. It is expected to be closer to the amount reported in 2012 or slightly more. It is estimated that approximately \$3.0 million in underpaid unemployment taxes will be collected in 2014.

- (viii) The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA Dumping prevention, investigation, and remediation.

The estimated staff time used to prevent, investigate and remediate SUTA cases is 13,483.5 hours, which is equivalent to 7.5 full time employees. Future amounts will become more exact as a new time keeping system was implemented in 2013.

- (ix) The number of SUTA Dumping investigations that involved the transfer of employees to or from an employee leasing company.

There was one SUTA Dumping investigation in 2013 which involved an employee leasing company.

- (x) The number of investigations in which an employee leasing company was found to have participated in SUTA Dumping.

There were no investigations in 2013 which found an employee leasing company to have intentionally violated SUTA Dumping rules.

- (xi) The number of employee leasing companies operating in Michigan.

According to the Agency records, as of December 31, 2013, there were 425 active companies in Michigan identifying themselves as employee leasing companies.

The number of employee leasing companies registered in Michigan includes a variety of different status types. There are 116 companies that have registered as employee leasing companies but are currently inactive on the Agency's computer systems. There are also 736 employee leasing companies shown as terminated. The status of some accounts may be subject to dispute.

Unemployment records may differ from other state agencies such as licensing because of varying rules and requirements. Most PEO entities are licensed by group account or on a consolidated basis. Most PEO's registered for unemployment are

done by individual corporation or subsidiary. This leads to a larger apparent number of unemployment accounts than would be found as licensed entities.