



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

June 06, 2014

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Dear _____ :

We are responding to your letter dated March 24, 2014, which requested information about the certification to the IRS of state unemployment insurance tax in the circumstances described below.

According to your letter and our subsequent conversation on April 16, 2014, the _____ recently started combining the accounts of separate employers for state unemployment insurance purposes if the employer entities (1) have common ownership, management, and control and (2) operate in the same line of business. You indicated during our conversation that most merged employer entities file combined _____ quarterly unemployment tax returns. However, each separate employer has a unique Federal Employer Identification Number (FEIN) and each employer files its own Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, with the IRS. According to your letter, the use of two different reporting methods has created an issue with the FUTA Certification Program, because the certification information provided by the _____ to the IRS relating to the merged entity does not match the information reported by each separate employer entity to the IRS. In an effort to resolve the mismatch issue, the _____ is considering providing a certification to the IRS for each separate employer entity, based on information provided to it by the merged entity regarding the employees and wages of each separate employer entity.

Although we cannot provide a response specific to your facts, we can provide the following general information which we hope will be helpful.

The Federal Unemployment Tax Act (FUTA) provides for cooperation between the federal and state governments in the establishment and administration of a federal-state

unemployment compensation program. Under this dual employment compensation system, the federal and state governments levy payroll taxes against employers.

Section 3301 of the Code¹ imposes a FUTA tax on every employer of 6% of the total wages paid by it during the calendar year. Section 3306(a) of the Code states that “employer” means, with respect to any calendar year, any person who:

- (A) during any calendar quarter in the calendar year or during the preceding calendar year paid wages of \$1,500 or more, or
- (B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

Employers may claim credits against their FUTA tax liabilities if their state’s unemployment compensation law, and the administration of the state’s unemployment compensation program, satisfy the federal requirements, and the employer made timely contributions to the state’s fund. Currently, a maximum credit of 5.4% is allowed against the 6.0% FUTA tax if the employer makes all payments to the state by the due date of the return. The FUTA Certification Program is the method IRS uses to verify with the state that the credit an employer claims against FUTA tax on Form 940 actually was paid into the states’ unemployment funds.

Section 3302(a)(1) of the Code provides that a taxpayer may “credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State.” Section 3302(a)(3) of the Code further provides that the credit “shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year.” Section 6071 of the Code and the regulations thereunder prescribe the time to file the Form 940. Under section 3302(a)(3) of the Code, the credit for contributions paid after the due date for the return required under section 6071 is limited to “90 percent of the amount which would have been allowable as credit on account of such contributions” had the contributions been timely.

Treasury Regulation section 31.3302(a)-3 indicates that each state must, among other things, provide to the IRS “a certificate of the proper officer of each state” showing for the taxpayer:

- (1) The total amount of contributions required to be paid under the State law with respect to such calendar year (exclusive of penalties and interest) which was actually paid on or before the date the Federal return is required to be filed; and

¹ All references to the Code are to the Internal Revenue Code of 1986, as amended.

(2) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

Each state is responsible for creating its own unemployment compensation program within the structure of the federal requirements. The state establishes the eligibility and disqualification provisions, benefit amounts, and the taxable wage base and rates. The state also determines the operations to be used and actually administers the state's program. The state processes workers' claims, determines workers' eligibility for benefits, and ensures timely payments to qualified workers. Additionally, each state determines employer liability and assesses and collects employer contributions made to the state's unemployment compensation program.

If employers report unemployment compensation information to a state on one aggregate form pursuant to state law, but the employers each report unemployment compensation information to the IRS separately for FUTA purposes, the information required by Treasury Regulation section 31.3302(a)-3 must be certified separately for purposes of the FUTA Certification Program and for purposes of obtaining the credit allowed under section 3302(a)(1) of the Code.

This letter has called your attention to certain general principles of the law. It is intended to provide general guidance for determining how to comply with applicable law and has no binding effect on the IRS. See Rev. Proc. 2014-1, §2.04, 2014-1 IRB 7 (Jan. 2, 2014). To obtain a binding written letter ruling, you should consider submission of a letter ruling request. The procedures to submit a letter ruling request can be found in Internal Revenue Bulletin 2014-1. If you have any additional questions, please contact our office at

Sincerely,

Branch Chief, Employment Tax Branch 1 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)