

**State Unemployment Tax Act (SUTA) Dumping
Annual Report**

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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 the 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, news releases related to SUTA Dumping, a fact sheet on SUTA Dumping, as well as a phone number to the Office of Employer Ombudsman office for additional information on SUTA Dumping.

3. Employer Advisor

To provide on-going communication regarding SUTA Dumping, the Agency publishes articles in the *Employer Advisor* which is a quarterly newsletter made available to the over 218,000 active employers in the state of Michigan. This newsletter is also available online.

4. UIA Outreach

There are two general forms of seminars offered. One type of seminar is Agency developed for specific requests by employer groups. It is known as the Agency's Speakers' Bureau. Any company or organization can request a speaker by contacting the Agency's Speakers' Bureau Coordinator at (313) 456-2943. The second type of seminar is planned by the Agency to cover a variety of topics including, as needed, issues related to SUTA Dumping.

SUTA Dumping Employer Communication and Education Procedure

5. Employer Handbook

The Agency's *Employer Handbook* is a 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. 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 website known as MiWam. MiWam allows for the electronic posting of most Agency forms.

Eventually all reporting will be done electronically. The electronic reporting is being phased in over the next few years, depending on the size of the employer.

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.

SUTA Dumping Detection and Enforcement Procedure

- 1) Referrals for possible SUTA Dumping are received from the SUTA Dumping Detection System software or the Midas Discoveries system; external sources such as other 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, documentation related to the transactions, ownership, transfers and correspondence is prepared for the case. Documentation is obtained from internal Agency records including wage records, tax filings, employer registration reports, employer correspondence, and filings with the related Corporations and Securities Bureau of the Department of Licensing and Regulatory Affairs. All known accounts and companies are reviewed.
- 4) A referral is forwarded to the UIA's SUTA Investigators, along with all documentation pertaining to the case.
- 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.
- 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 on 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.

SUTA Dumping Detection and Enforcement Procedure

- 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 will write up a recommendation of action and reassign the case to the tax office as pending Determination. Additional information may be required and the auditor or investigator will follow up with the employer to collect the information needed.
- 10) The case is then reassigned to the tax office. The Agency prepares a Determination 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 a hearing, the tax staff will prepare a document package to be provided to MAHS. The package is reviewed by Agency staff for completeness prior to sending it to MAHS.
- 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.

SUTA Dumping Detection and Enforcement Procedure

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, 2012, there have been 79 SUTA Dumping investigations opened since January 1, 2012, 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 reported on all SUTA investigations conducted since the inception of the program and they are not limited to a single calendar year.

The average length of time to resolve a SUTA Dumping investigation is 14 months since the program began. There have been 220 investigations pending for more than 6 months but less than 1 year; and 262 investigations pending for more than 1 year since the program began.

Please note that in calculating 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 is not 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 twelve cases brought before an Administrative Law Judge or the Michigan Compensation Appellate Commission (MCAC) for Review in 2012 where decisions were reached. There was one additional case brought before a circuit court. Not all of the cases were simple wins or losses. One case went to hearing but resulted in a decision of lack of prosecution. No employer representative arrived. This case will be re-heard. There are five cases with decisions of MCAC (appealed from prior administrative law judge hearings). Six cases went to hearing before an administrative law judge. Two of the cases brought before an administrative law judge resulted in a withdrawal of appeal. No hearings were actually held in those cases withdrawn, instead settlement agreements were reached. Those settlements are considered favorable for purposes of this section. The decision from the circuit court was favorable to the Agency's position. Overall the decisions were in the Agency's favor 42% of the time in 2012.

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

During calendar year 2012, the Agency has recovered and returned to the Trust Fund \$2,342,777.30. Because of new computer systems implemented in 2012, payments being made on older SUTA cases are no longer being tracked as SUTA cases. Some data was lost in migration.

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

As of December 31, 2012, the balance for Michigan's Unemployment Insurance Agency's Trust Fund is surplus of \$865.7 million.

- (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 2013 will be somewhat more than the amount collected in 2012 or approximately \$2.5 million in underpaid unemployment taxes is anticipated.

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

Counting the investigation and administration of SUTA cases, there were a total of 13,494 hours spent in prevention, investigation and resolution of SUTA cases in calendar year 2012. This equates to 6.49 full time employees.

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

Of the 79 investigations initiated in 2012, 2 investigations involved the transfer of employees to or from employee leasing companies.

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

In 2012, 4 employee leasing companies investigated in 2 cases were found to have participated in SUTA Dumping.

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

According to the Agency records, as of January 12, 2012, there were 453 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 1,269 companies that have registered as employee leasing companies on the Agency's computer systems. However, 684 of those accounts are listed as terminated, 32 are listed as resumed and 100 are listed as currently inactive. The status of some accounts may be subject to dispute.