

FACT SHEET #124 SEPTEMBER 2017

## Effect of Acquiring a Bankrupt Business on an Employer's Unemployment Tax Rate

### Administrative actions can continue during bankruptcy

Although a bankruptcy filing prevents creditors from taking any collection action against the bankrupt employer, government entities, including the Talent Investment Agency, Unemployment Insurance (UI), may continue to audit, issue notices of tax delinquencies, require the filing of tax returns, and issue assessments against the employer while in bankruptcy.

### Acquisition of assets through bankruptcy can still result in successorship

Assets may be sold out of bankruptcy "free and clear" of liens and other encumbrances, when assets are acquired by a purchaser during bankruptcy proceedings. However, UI can still determine that the acquiring employer is the "successor" to the bankrupt employer if the other tests for "successorship" are met. In addition, the bankrupt employer's unemployment tax delinquency accrued before the bankruptcy does not transfer through bankruptcy to the purchaser.

### Conditions that can result in successorship from a predecessor employer

If there is substantially common ownership, management, or control between the predecessor employer and the successor employer (or between different divisions of the same employer) at the time of the transfer, there is a **mandatory** successorship.

There is also a **mandatory** successorship between the two employers (or between different divisions of the same employer) if there is an "acquisition," in whole or in part of the organization (payroll/employees), trade (customers/accounts), or business (products/services), or 75% or more of the assets from the predecessor employer (or division) by the successor employer. "Acquisition" can occur by sale, lease, rental, merger, inheritance, foreclosure, gift, **bankruptcy**, or any other means of transfer.

### "Transfer of Business" results in transfer, in whole or part, of unemployment insurance experience and tax rates

When there is a successorship (or even when there is a transfer of employees between employers without any successorship), UI must transfer a portion of the unemployment "experience" from one employer to the other when the employers are in the same kind of business and when the successor continues the business or resumes the prior business within one year. This is called a "**transfer of business.**"

There is a mandatory "**transfer of business**" when the two businesses share substantially common ownership, management, or control and there has been a transfer of any kind of asset, tangible or intangible. There is also a mandatory "transfer of business" when employees transfer from one employer to the other and continue doing the same work they did before the transfer.

Therefore, when conditions of “**successorship**” are met, including the acquisition of assets through bankruptcy, the successor employer can acquire all or part of the bankrupt employer’s unemployment tax experience (which can be a favorable history and a low unemployment tax rate, or an unfavorable history and a high unemployment tax rate). Unemployment tax rates range from 0.06% to 10.3%, applied to the first \$9,000 of each covered worker’s annual wages.

A seller of a business is required to provide the purchaser, not less than two calendar days before the acceptance of an offer, a statement of the seller’s outstanding unemployment tax liability, unreported unemployment tax liability, and tax payments. The statement must also include unemployment tax rates and benefit charges for the previous five years, as well as a list of current employees and a list of employees separated within the previous 12 months.

**For further information**

For general information about successorship and about how unemployment taxes are calculated, call UIA Employer Customer Service at 1-855-484-2636.