



FACT SHEET #138 APRIL 2014

SUCCESSORSHIP AND THE IMPORTANCE OF RECEIVING A DISCLOSURE & CLEARANCE OF ACCOUNT PRIOR TO ACQUIRING AN EXISTING BUSINESS

If you purchase or otherwise acquire an existing business that is liable for unemployment taxes, the purchaser (transferee) can be liable for tax debts incurred by the seller (transferor).

An employing unit that acquires the organization, trade, business, or 75% or more of the assets of an already existing business will be liable for unemployment taxes and interest due the Unemployment Insurance Agency (UIA) if the seller has an outstanding debt. Debt may also transfer if there is a transfer of business between two or more commonly owned, managed or controlled businesses. Prior to acquiring an existing business, Section 15(g) of the Michigan Employment Security (MES) Act requires certain clearances and/or disclosures be provided to the purchaser. If this is not done, the purchaser is unaware of any outstanding issues on the seller's unemployment account until they either have to pay their taxes using a high tax rate or are assessed, under Section 15(g) of the MES Act, for their predecessor's unpaid taxes and interest. Assumption of delinquent tax liability is additional to the potential transfer of experience account and tax rate(s).

What is the difference between a *Clearance of Account* and a *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*?

- Form UIA 1395, *Clearance of Account*, certifies the status of tax liability (taxes owing to UIA) of the seller. This is important information since the buyer may be responsible for paying any outstanding delinquency on the seller's account.
- Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*, is used by the seller to disclose if there are any issues that could affect their current and future tax rates and must be disclosed for the most recent 5 years, such as cumulative benefit charges, missing tax reports, delinquent payments or a negative reserve balance. It is a misdemeanor not to disclose to the buyer.

Both are important documents and should be read carefully when acquiring or purchasing an existing business.

Successorship Involving Reimbursing Employers

Since there is no transfer of experience account from Contributing to Reimbursing employers or from Reimbursing to Contributing, a Form UIA 1027 *is not* required. However, if a predecessor involved in these types of successorships has an outstanding debt, Section 15(g) does apply. Therefore, a Form UIA 1395, *Clearance of Account*, should be requested.

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Clearance of Account

The seller (transferor) or purchaser (transferee) should request the tax clearance prior to the sale, in writing and not less than 10 days before the transfer of business, as to any amounts owing to the Agency. When the UIA provides the clearance of account which certifies the tax liability as of the request date, the transferee will not be liable for any amount due from the transferor in excess of the amount certified by the Agency.

Disclosure of Unemployment Tax Liability

The statute requires the seller of a business, or the seller's real estate broker, attorney, or other agent, to deliver Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*, to the buyer of the business prior to acquisition.

This form is used by the seller to disclose if there is any outstanding unemployment tax liability, any unreported tax liability (missing tax reports), and the tax payments, tax rates and cumulative benefit charges for the most recent 5 years, and the actual reserve balance as of the prior June 30th. The actual reserve balance could be a negative or positive amount. A "Negative Balance" means that the employer paid less in state unemployment taxes than their former employees received in unemployment benefits.

Additional information provided - The seller must list the names, addresses and social security numbers of all their employees as of the date the form is signed; this informs the buyer of the potential number of claimants for future benefits. Also they must list the names, addresses, and social security numbers of their employees separated in the most recent 12 months prior to the date the Form is signed. This will give the buyer an idea of current and potential charges to their account.

The Seller can request the Form UIA 1027 from UIA's Tax Office, but should do so at least two weeks before the closing of the sale of the business to ensure adequate time for processing the request and mailing to the seller. The UIA is not responsible for providing this information to the buyer.

STATEMENT OF PENALTIES APPLICABLE FOR NON-COMPLIANCE WITH LAW. Failure of the business transferor or transferor's agent to timely provide correct information is a misdemeanor, punishable by up to 90 days imprisonment and/or fine of up to \$2,500.00, or both. Civil liability for consecutive damages may also apply, as well as other remedies provided by law.