



Maximum Tax Rates When Quarterly Tax Reports Are Not Filed

What the law says: This issue is covered by Section 18(d)(2) of the *Michigan Employment Security Act*. The law says that if any of the quarterly tax reports due from an employer during the rate computation period (the twelve months ending on the June 30 of the previous calendar year) is missing, the UIA will figure the employer's tax rate on the basis of whatever reports were filed, as long as at least one report is on file, and will add a penalty of 3.0% because one or more reports are missing. If all the missing reports are submitted within 30 days after the rate Determination is issued, the UIA will refigure the tax rate and will drop the penalty. If the report or reports are submitted beyond 30 days, but within one year, the UIA will refigure the rate and will drop the penalty completely if the business had "good cause" for being late in filing, or will drop the penalty to 2.0% if the business did not have "good cause" for being late in filing. If all the missing reports are filed beyond 1 year but within 3 years, UIA will recalculate the rate and add a 3.0% penalty.

Early each year, the employer is sent Form UIA 1771, Tax Rate Determination for Calendar Year _____. From the date that Determination is mailed, the employer has 30 days in which to file the missing reports and protest the rate. This is true even if the employer did not file because they had no payroll during the calendar quarter. The employer's tax rate will then be recalculated, using the information the employer has then provided.

Example 1: Employer A forgot to file a UIA tax report (Form UIA 1020) for the first calendar quarter of 2009. The Agency needs the information from that report about wages paid to workers during that quarter, but will assign a rate of 6.7% based on the other 3 quarters on file, and will add a penalty of 3.0%. The rate will be labeled "Code 2."

Form UIA 1771, Tax Rate Determination for Calendar Year _____ will direct the employer's attention to explanatory item "Code 2" on the back of the Form. "Code 2" then explains that the rate was calculated on the quarters on file, and that a penalty was added because a quarter was missing. The Form also tells the employer exactly which quarterly report was missing. The employer must provide the missing report within 30 days to avoid having to pay the rate, as calculated, plus the 3% penalty.

Example 2: The employer receives Form UIA 1771, imposing the maximum tax rate applicable to that employer and indicating that the tax report for the second quarter was not received by UIA. The employer believes the report was filed, and in fact the employer shows the tax payment entered in his/her check register. The employer therefore ignores the tax rate determination, believing the UIA will eventually correct the rate.

The employer will receive a rate calculated on the available quarters, plus a penalty of 3%, if the employer does not protest the rate and present evidence (such as the cancelled check) to show that the report was previously filed within 30 days. Unless the employer produces evidence with the letter of protest, such as a cancelled check to show that the UIA made an error and failed to properly record the receipt of the tax report, the employer will have to pay the rate as calculated, plus the 3% penalty. This could be extremely costly for the employer.

Proof at the Hearing: The UIA has the obligation to assert that the employer's tax report was not received. The employer must then prove the UIA's assertion was wrong by presenting evidence that the report was, in fact, received by the UIA on time. The employer must also show that, based on the information in the report in question, his/her tax rate should have been lower than the one assigned by the UIA. If good cause for untimely filing the report is at issue, the employer has the burden of showing the good cause.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.