

## State Unemployment Tax Act (SUTA) Final Report

### Summary and Implications<sup>1</sup>

#### Background

On August 9, 2004, President Bush signed Public Law 108-295, the “SUTA Dumping Prevention Act of 2004.” The law amended section 303(k) of the Social Security Act (SSA) by establishing a minimum nationwide standard for curbing an unemployment compensation (UC) tax rate manipulation scheme known as “SUTA dumping,” and required the Secretary of Labor to conduct a study of state implementation, and report the findings to Congress. SUTA dumping refers to practices that some employers and financial advisors engage in to manipulate state experience rating systems to pay lower state unemployment insurance taxes than their unemployment experience would otherwise allow.

The completed report, titled *Evaluation of State Implementation of Section 303(k), SSA*, provides information on state actions to meet the requirements of the law and operating guidance, and presents recommendations provided by select states regarding the need for further Congressional action to improve the effectiveness of section 303(k) of the SSA. The goals of the evaluation were to: (a) identify state legislation intended to mitigate the practice of SUTA dumping, (b) measure the use and effectiveness of state penalties intended to curb SUTA dumping, (c) analyze state law transfer of experience provisions regarding the entry of a client into a Professional Employer Organization (PEO) relationship and the financial impact of such treatment both on state trust funds and on the PEO industry, and (d) compile resultant data and information necessary to assist the Secretary of Labor to deliver a report to Congress.

#### Report Findings

The data collection for the study consists primarily of information regarding implementation activities between January and September 30, 2006. The information and data presented in this report represent a snapshot in time when most states were still in the implementation process. Accordingly, while every state enacted conforming legislation, the available data are too limited to conclusively assess the effectiveness of the Act. However, the data do offer useful information on preliminary trends identified during the implementation process:

- While the states have all enacted conforming legislation to Section 303(k), SSA, there is significant variation in the amount of resources being devoted to the identification of SUTA dumpers. At the time of the study, state UC agencies were at different early stages of implementing organizational structures; assigning and training staff; setting policies, rules, and procedures; utilizing their detection system; and pursuing cases resulting in collections or other dispositions.

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<sup>1</sup> This Summary and Implications document was prepared by the Employment and Training Administration and does not necessarily reflect the opinions of the study author(s).

- States' experience in assessing penalties on employers, and advisors to employers, has been limited.
- When asked to assess the need for any further Federal legislation, states responded with various suggestions for combating tax avoidance schemes in general. There appeared to be little agreement or consensus at this early stage of the implementation process regarding the status of PEOs and state experience rating laws.
- Individual state law determines whether or not the PEOs in the state are treated as the employer under its UC law. Thirty-six states permit the PEO to be the employer and report a client's payroll under a PEO account. However, 17 states are now requiring the PEO to report the payroll under the client account.
- States have assigned significant resources to SUTA dumping through the utilization of 208 full-time equivalent positions to detect, investigate, and prosecute SUTA dumping cases.
- States have trained a total of 3,364 staff members and have investigated 1,640 SUTA dumping cases through September 30, 2006.
- These investigations have found 787 SUTA dumping violations by employers and have yielded additional tax assessments of \$102,298,336. Of this amount, the states have collected \$52,456,899.
- While only 48 SUTA dumping determinations have been appealed nationwide, 34 of those cases have been upheld at the first level of appeals, four cases were reversed, and ten cases were still undetermined at the time of this writing. The states' interpretation of law was, therefore, upheld in 89 percent of cases determined at the lower level.
- Fifty-one states responded that they were "satisfied" or "very satisfied" with the provisions of Section 303(k), SSA.
- Almost all states identified the need for additional training to detect occurrences of SUTA dumping.

### Policy Implications

1. *Need for additional Federal legislation and/or other Federal action.* Twenty-three states (43 percent) indicated that additional Federal legislation and/or other action [Unemployment Insurance Program Letter (UIPL)/Federal Regulations, etc.] is needed to improve the effectiveness of SUTA dumping detection, prevention, and enforcement.
2. *Need for Technical Assistance and/or Training.* Almost all states have indicated a need for additional training. States most often cited a need for both technical assistance and



training in the use and implementation of the North Carolina SUTA Dumping Detection System (SDDS). The expertise of staff assigned to use the SDDS varies significantly. Therefore, it is essential that timely, effective technical assistance be provided. To that end, the Employment and Training Administration facilitated two user group conference calls to provide updates on the current status of work in progress and proposed short-term and long-term projects.

