

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 33-09

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Measuring State Effectiveness in Implementing State Unemployment Tax Act (SUTA) Dumping Detection and Enforcement Procedures

1. **Purpose.** To notify states of upcoming changes to the collection and reporting of data on the ETA 581 Contributions Operations report and the Tax Performance System (TPS) program reviews intended to measure the effectiveness of state SUTA dumping detection and enforcement methods and to solicit state volunteers to test these changes.
2. **References.** Public Law (P.L.) No. 108-295, the “SUTA Dumping Prevention Act of 2004,” the Social Security Act (SSA); the Internal Revenue Code (IRC), including the Federal Unemployment Tax Act (FUTA); ETA Handbook No. 407; and Unemployment Insurance Program Letters (UIPLs) No. 29-83, Change 3, No. 15-84, and No. 30-04 and 30-04, Change 1.
3. **Background.** The SUTA Dumping Prevention Act of 2004 (the Act) was enacted to curtail an employer tax avoidance practice known as SUTA dumping. The Act amended Federal law by adding Section 303(k) to the Social Security Act, which required states to amend their laws to prohibit certain tax avoidance schemes by January 1, 2006, and to establish procedures for detecting these schemes.

The U.S. Department of Labor (DOL) organized a workgroup of state and Federal staff in the summer of 2008 to 1) explore SUTA dumping factors that could be measured and reviewed and 2) explore how to collect the data and review the states’ enforcement programs. The workgroup recommended that DOL measure state SUTA dumping detection and enforcement actions through data captured on a modified ETA 581 report, and also observe and verify state SUTA dumping detection activities through enhanced TPS reviews.

4. **Proposed Changes to the ETA 581 – Contributions Operations Report.** States report summary UI tax operation data to DOL on the quarterly ETA 581 report. DOL uses the data to evaluate the states within UI Performs standards, after validating the data to ensure that states reported properly. DOL proposes adding three new cells to this report to collect SUTA

RESCISSIONS	EXPIRATION DATE August 11, 2010
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dumping data while simultaneously eliminating two cells that are not used for any computed measures.

- a. **Proposed Cells Added.** Section 303(k) requires states to (1) establish procedures to identify the transfer or acquisition of a business for purposes of that subsection, (2) mandate transfers of experience when there is a transfer of trade or business, or a portion thereof, to another employer, and, at the time of the transfer, there is substantial common ownership, management or control of the two employers, and (3) prohibit transfers of experience whenever a person who is not an employer acquires the trade or business of an employer if the state agency finds such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. DOL proposes to add Line 503, containing three new cells, to the ETA 581 report to collect state data that measure the:
 - i. Number of **mandatory unemployment experience transfers** that resulted from SUTA dumping detections and investigations;
 - ii. Number of **prohibited unemployment experience transfers** that resulted from SUTA dumping detections and investigations;
 - iii. Amount of **additional contributions due** from mandatory and prohibited transfers that resulted from SUTA dumping detections and investigations.

- b. **Proposed Cells Removed.** The ETA 581 was modified in 1989 to collect information on employers who have not filed contribution reports as required. States were required to calculate and report a reasonable estimate for the amount of UI tax due on those delinquent quarterly reports. The data collected in those two cells have never been included in the UI Performs computed measures, nor are the data included in any other aggregated reports. Therefore, ETA proposes removing the following cells from the ETA 581 report:
 - i. Line 201, Item 12 – Number of Outstanding Quarters Prior to the Report Quarter;
 - ii. Line 201, Item 13 – Total Estimated Contributions Due.

5. **TPS.** The TPS program and its predecessor, Revenue Quality Control, have been an important part of DOL’s UI performance evaluation process. ET Handbook No. 407 states that “The Tax Performance System (TPS) is intended to assist State administrators in improving their Unemployment Insurance (UI) programs by providing objective information on the quality of existing revenue operations. TPS will also serve to help the U.S. Department of Labor carry out its oversight, technical assistance, and policy development responsibilities.” In addition to collecting data on SUTA dumping activities on the ETA 581 report, DOL will revise the TPS Systems Review of the Status Determination tax function to include whether states have procedures to identify transfers and acquisitions of businesses to detect SUTA dumping or other manipulations of state laws governing the transfer of experience. The review will verify that the state agency:
 - a. Has written procedures or guidelines to identify and investigate potential SUTA dumping activity and/or violations of other state law provisions mandating or denying the transfer of experience;

- b. Compiles an automated data base that identifies employers whose movement of employees from one quarter to the next might be evidence of SUTA dumping and/or violation of other state law provisions that mandate or deny the transfer of experience;
- c. Routinely identifies and assigns for further investigation or action instances of SUTA dumping and/or violations of other state law provisions that mandate or deny the transfer of experience.

Unless the review confirms that the state agency conducts all three of the above, the tax function will be considered “at risk” and suggestions will be made for improvement. TPS acceptance sampling will not be performed for SUTA dumping activities. The TPS review, together with the additional data collected on the revised ETA 581 report, will enable DOL to measure the effectiveness of state performance with respect to meeting the requirements of the SUTA Dumping Prevention Act.

- 6. **Timeline.** Reporting changes to the ETA 581 report are planned for the quarter ending March 31, 2011. Changes to the TPS program are planned for the review of the 2010 calendar year tax operations, conducted during 2011.
- 7. **Action Requested.** State administrators should share this information with appropriate staff and contact the appropriate Regional Office if the state is interested in participating in a pilot to test the changes. States should specify whether they want to test the modified ETA 581 report, the TPS evaluation, or both.
- 8. **Inquires.** Questions concerning this advisory should be directed to your Regional Office.
- 9. **Attachments.** ETA 581 Contributions Operations report, current and proposed.