

<p>Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210</p>	<p>CLASSIFICATION SUTA Dumping</p>
	<p>CORRESPONDENCE SYMBOL DL</p>
	<p>DATE August 13, 2004</p>

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 30-04

TO: STATE WORKFORCE AGENCIES

FROM: CHERYL ATKINSON /s/
Administrator
Office of Workforce
Security

SUBJECT: SUTA Dumping - Amendments to Federal Law affecting the
Federal-State Unemployment Compensation Program

1. **Purpose.** To advise states of the amendments to Federal law designed to prohibit "SUTA Dumping."
2. **Reference.** Public Law (P.L.) No. 108-295, the "SUTA Dumping Prevention Act of 2004," signed by the President on August 9, 2004; the Social Security Act (SSA); the Internal Revenue Code (IRC), including the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letters (UIPLs) 29-83 (56 Fed. Reg. 54891 (October 23, 1991)), 29-83, Change 3 (61 Fed. Reg. 39156 (July 26, 1996)), 30-83, 15-84, and 34-02.
3. **Background.**
 - a. **In General.** Some employers and financial advisors have found ways to manipulate state experience rating systems so that these employers pay lower state unemployment compensation (UC) taxes than their unemployment experience would otherwise allow. This practice is called SUTA dumping. ("SUTA" refers to state unemployment tax acts, but has also been said to stand for, among other things, "State Unemployment Tax Avoidance.") Most frequently, it involves merger, acquisition or restructuring schemes, especially those involving shifting of workforce/payroll. The legality of these SUTA dumping schemes varies depending on state laws. P.L. 108-295 amended the SSA to add a new Section 303(k) establishing a nationwide minimum standard for curbing SUTA dumping. All states will need to amend their UC laws to conform with the new legislation.
 - b. **Experience Rating.** All states operate experience rating systems in order for employers in the state to receive the additional credit against the Federal unemployment tax. (The tax credit scheme is explained in UIPL 30-83 and experience rating in UIPL 29-83.) Under experience rating, the state unemployment tax rate of an employer is, in most states, based on the amount of UC paid to former employees. The more UC paid to its former employees, the higher the tax rate of the employer, up to a maximum established by state law. Experience rating helps ensure an equitable distribution of costs of the UC program among employers, encourages employers to stabilize their workforce, and provides an incentive for employers to fully participate in the UC program. SUTA dumping thwarts these purposes.

c. SUTA Dumping and the Amendments Made by P.L. 108-295. The amendments to the SSA made by P.L. 108-295 are intended to prohibit the following two methods of SUTA dumping:

- An employer escapes poor experience (and high experience rates) by setting up a shell company and then transferring some or all of its workforce (and the accompanying payroll) to the shell company after the shell has earned a low experience rate. The transferred payroll is then taxed at the shell's lower rate.
- An entity commencing a business purchases an existing small business with a low UC tax rate. Instead of being assigned the higher new employer rate, the entity receives the small business's lower rate. Typically, the new business ceases the business activity of the purchased business and commences a different type of business activity.

Among other things, the SSA, as amended, requires state laws to prohibit these forms of SUTA dumping as a condition of states receiving administrative grants for the UC program. It also requires states to impose penalties for knowingly violating (or attempting to violate) these provisions of state law.

A more detailed discussion of these amendments, including effective dates, is contained in Attachment I. Draft language for use in crafting state legislation is contained in Attachment II. Attachment III contains a checklist for assisting states in determining the conformity of their laws with these amendments. Attachment IV contains the text of P.L. 108-295.

P.L. 108-295 also requires the Secretary of Labor to conduct a study "of the implementation of" the amendments "to assess the status and appropriateness of State actions to meet" their requirements. P.L. 108-295 also requires the Secretary to submit to the Congress, not later than July 15, 2007, a report that (1) assesses the statute and appropriateness of state actions to meet its new requirements, and (2) recommends any further Congressional action that the Secretary considers necessary to improve the effectiveness of the amendments. (See Section 2(b) of P.L. 108-295.)

d. **Access to the National Directory of New Hires.** P.L. 108-295 also amended the SSA to permit the use of certain information in the National Directory of New Hires to be used by state UC agencies in the administration of Federal and state UC laws. The Department of Labor (Department) will provide more information on this amendment and its implementation in the future. It is not anticipated that this amendment will require states to amend their UC laws.

4. **Action.** State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of Federal law contained in this advisory.

5. **Inquiries.** Questions should be addressed to your Regional Office.

6. **Attachments.**

ATTACHMENT I - [DETAILED EXPLANATION OF SECTION 303\(k\), SSA - QUESTIONS AND ANSWERS](#)

ATTACHMENT II - [DRAFT LEGISLATIVE LANGUAGE](#)

ATTACHMENT III - [CONFORMITY CHECKLIST FOR STATE SUTA DUMPING LAWS](#)

ATTACHMENT IV - [TEXT OF P.L. 108-295](#)

RESCISSIONS	EXPIRATION DATE
None	Continuing