

# SERVICE BULLETIN



## Florida Implements Aggressive SUTA-Dumping Detection Effort

*TO:* T&T Clients  
*FROM:* Kris Thorngren  
*RE:* Florida SUTA-Dumping Detection  
*DATE:* November 24, 2008

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We have been advised that the Florida Department of Revenue has established a unit which focuses on detecting SUTA-dumping. This unit is identifying situations in which employees have transferred from one employer account to another, but neither employer has provided the Department with an explanation or a notification of the sale or transfer of business. The Department is reviewing all such occurrences going back to 2006.

When the Department identifies an unreported and questionable transfer of employees, a “Common Ownership Notice” is sent to the employer which gained the employees/payroll. An example of this letter and the questionnaire which accompanies it is provided below.

Importantly, the Department takes the position that common ownership, management, or control existed between the two employers (even though this may not be correct), in which case a transfer of unemployment experience is required by law. Any employer receiving the “Common Ownership Notice” has twenty days to respond, and to establish that no common ownership, management, or control existed between the two parties. If a timely response is not submitted, the notice states that a transfer of unemployment experience will be completed, the tax rate will be recalculated, and the revised tax rate will take effect at the beginning of the next calendar quarter.

If you receive a Common Ownership Notice please contact Josh Kendall at Thomas & Thorngren, Inc. for assistance in responding to the Florida Department of Revenue. Failure to submit a response within the twenty-day protest period could cause a substantial and unnecessary increase in your tax rate.

If there are any questions please do not hesitate to contact me.



Thomas & Thorngren, Inc.

SERVICE BULLETIN



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Nashville, Tennessee 37228  
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**Florida Department of Revenue  
Unemployment Tax  
Common Ownership Notice**

UCSFL25R

Mailed on or before  
November 21, 2008

UT Account #:  
Business Partner #:  
Contract Object #:  
FEIN:

C/O THOMAS & THORNGREEN  
PO BOX 280100  
NASHVILLE TN 37228-0100

Dear

Florida law states that "If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is any common ownership, management or control of the two employers, the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is so transferred." (Florida Statutes, section 443.131(3)(g)1.a.) Florida law also defines "trade or business" to include the employer's workforce.

Based on a review of the Department's records, it appears that your business acquired part of or the entire workforce of \_\_\_\_\_ on \_\_\_\_\_. Further, it appears that when the transfer occurred, common ownership, management, or control existed between your business and \_\_\_\_\_.

The purpose of this letter is to give you the opportunity to present documentation (see attached checklist), if you believe the Department's records are in error. If you do not respond within 20 days of receipt of this letter, the Department will recalculate your unemployment tax rate. Under the law, the recalculated tax rate is effective from the beginning of the calendar quarter immediately following the date of the transfer of the trade or business. If the transfer occurred on the first day of a calendar quarter, the rate will take affect then.

Please contact the person whose name appears at the bottom of this letter if you have questions. You may also want to review Rule 60BB-2.031, on the Department's Internet site at <http://www.myflorida.com/dor>.

Please send written correspondence to:  
Compliance Campaigns  
Florida Department of Revenue  
P.O. Box 6417  
Tallahassee, FL 32314-6417

Department contact:

**Dianne H. Ayers**  
(850) 410-2677

## SUTA DUMPING QUESTIONNAIRE AND CHECKLIST

1. Is your business a sole proprietorship, partnership, corporation or limited liability company?
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Please answer the questions appropriate for your business type and provide the documentation requested.

### **Sole Proprietorship:**

1. Who manages the business?
1. Who controls the business?
2. Do you have a management agreement? With whom? Please provide a copy.

### **Partnership:**

1. Who are the partners? Please provide a list.
2. Please provide a copy of the partnership agreement.

### **Corporation: (please provide a copy of items 1-5)**

1. Corporate minutes describing the formation of the new entity(s).
2. Articles of incorporation for the new entity(s).
3. Corporate-by-laws for the new entity(s)
4. List of owners/officers/directors for the new and former entity(s)
5. List of shareholders/members/partners for the new and former entity(s)
6. Is your business a member of an affiliated corporation as defined by Section 1504(a) of the Internal Revenue Code? If so, who are the other affiliated corporations.

### **Limited Liability Corporation: (please provide a copy of items**

1. List of people who hold a membership interest for the new and former entity(s).
2. List of managing members.
3. Operating agreement and articles of organization.

### **Extra Documentation needed from all business types:**

1. Bill of sale for transferred assets and business
2. Bank account names and numbers for payroll and operating expenses for new company and former company
3. Telephone listings of new company and former company
4. Internet web domains of new entity and former company
5. All documents, including internal memos, which mention or discuss the reason(s) for the transfer
6. Worker's Compensation policy
7. Notices to transferred employees about the transfer.
8. Agreements between new entity(s) and former company.
9. List of all person(s) with the ability to directly or indirectly influence or direct management, activities or policies of the business through ownership of stock, voting rights, contract, loans, or other means.