



California Payroll Conference 2015
Your Passport to Payroll Excellence

Employment Tax Overview: ***Compliance & Savings***

Ross E. Henderson, Emptech

10:45am – 12:15pm Friday October 9, 2015

Meet Your Presenter



Ross E. Henderson

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COO, [Emptech](http://emptech.com)

President, Association of Unemployment Tax Organizations (“AUTO”)

Advisory Board Member, HR.com (Core HR, Payroll)

APA GRTF Unemployment Insurance Subcommittee

Cloud-based HR Technology and Skilled Consulting

Talent Management

- Applicant Tracking System
- Efficient Onboarding & HR Tools

Electronic I-9

- Integrated E-Verify
- Easy-to-use High Compliance Platform

Income Verification

- Verification of Income & Employment
- Employee satisfaction with 24/7 service

UI Claims Management

- Claims administration & appeals representation
- UI Cost Control

Credits & Refunds

- Hiring Based Credits / WOTC
- Retrospective Research and \$\$\$ Refund Recovery

Tax Consulting

- Mergers & Acquisition Employment Tax
- Compliance & Tax Savings

Compliance, Efficiency, & Bottom Line Benefit

Agenda

- I. Macro Economic Overview
- II. Federal: FICA & FUTA
- III. State UI
- IV. State Spotlights: CA, CT, NJ, NY
- V. UI Legislation & Enforcement
- VI. Tax Optimization Tips

Fun Gifts:



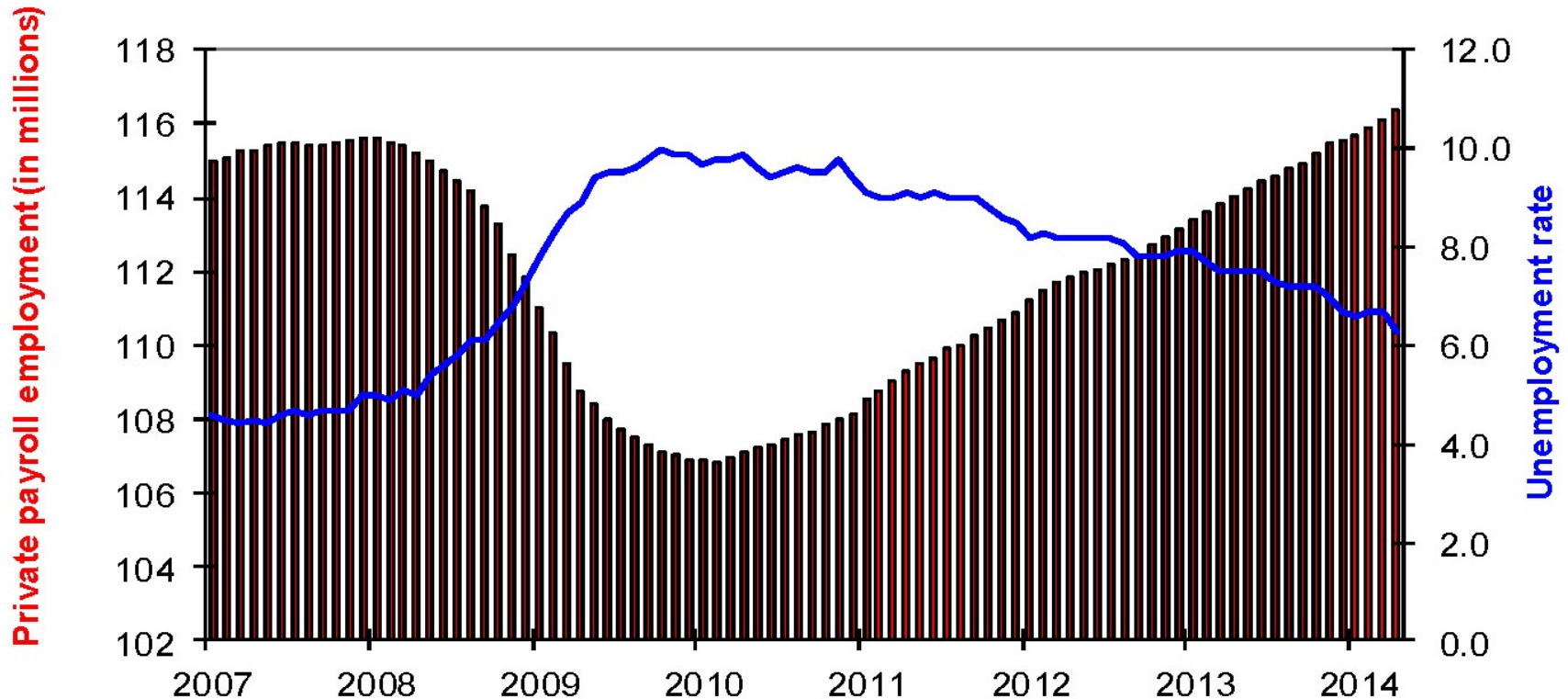
Audience Questions



- Company Structure?
- Payroll Structure?
- Employment Tax Structures?
- Employment Tax Challenges?

Job Growth & Unemployment

Unemployment and Job Growth since Jan 2007



August 2015 – 5.1% Unemployment Rate

Source: Bureau of Labor Statistics

FICA Overview



- Federal Insurance Contributions Act (“FICA”) codified under U.S.C. Title 26 Chap 21
- Entire FICA remains 15.3% (SS tax 12.4% + Medicare 2.9%*) equally shared between Employer “ER” and Employee “EE”.
 - * ERs must withhold additional 0.9% from EE’s wages in excess of \$200K (no ER matching contribution)*
- Supreme Court rules FICA tax due on severance pay
- Social Security Wage Base
 - 2015 = \$118,500 (max \$7,347 SS tax)
 - 2014 = \$117,000 (max \$7,254 SS tax)
 - 2013 = \$113,700; 2012 = \$110,100

- Potential change of FICA refund rules
 - EE consent used to support a claim for refund under § 6402 of IRC and § 31.6402(a)-2 of ETR for overpaid taxes under FICA and RRTA.
- Proposed:
 - EE consent must identify basis of the claim for refund and be signed under penalties of perjury.
 - Defines “reasonable efforts.”
 - Would permit, but not require, EE consent to be requested, furnished, retained electronically.
- IRS currently evaluating position

FICA Changes – APA



APA response to IRS on the FICA

- affirming all
except certain
ER-side only
filings.



American Payroll Association

Government Relations • Washington, DC

May 29, 2015

Internal Revenue Service
CC:PA-LPD:PR (Notice 2015-15)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20224
Submitted via e-mail to: Notice.Comments@irs.counsel.treas.gov

Re: Notice 2015-15

Ladies and Gentlemen:

The American Payroll Association (APA)¹ thanks the Service for the opportunity to comment on the proposed revenue procedure concerning employee consents that are used by an employer to support a claim for refund for overpaid FICA or RRTA taxes. The APA commends you for your effort to improve the process by permitting employers to request, obtain, and retain consents in an electronic format. The APA also appreciates your work to provide additional guidance to define “reasonable efforts” in relation to the attempt to secure an employee’s consent.

The APA supports the proposed revenue procedure to allow for electronic consents and believes that the proposal also advances the IRS’s goal “of making the process more efficient while protecting the interests of employees.” The proposal should streamline the process for employers that choose to seek consents in an electronic format, while also allowing the continued use of a paper format for employers that do not wish to change their procedures. While supporting the move to allow electronic consents, the APA recommends that the revenue ruling should not be applicable in the case of “employer-only” FICA refund requests.

Employer-Only Filings

Section 2 of the revenue procedure specifically states that it is not applicable to overpayments of the Additional Medicare Tax. This is because an employee may claim a refund of overpaid tax via a Form 1040 or 1040X, while an employer may only make a claim for refund if the employer did not withhold

¹ The APA is a nonprofit association of over 20,000 payroll professionals who process payroll for approximately 17,000 employers throughout the 50 states, the District of Columbia and the U.S. territories. Our membership also includes representatives of large, medium, and small payroll service providers who are responsible for processing payroll for an additional 1.5 million employers. In total, the APA represents those professionals responsible for paying an aggregate total of one-third of the private sector workforce.

The APA’s primary mission is to educate its members and the payroll industry regarding best practices associated with paying America’s workers while complying with applicable federal, state, and local laws. In addition, the APA’s Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

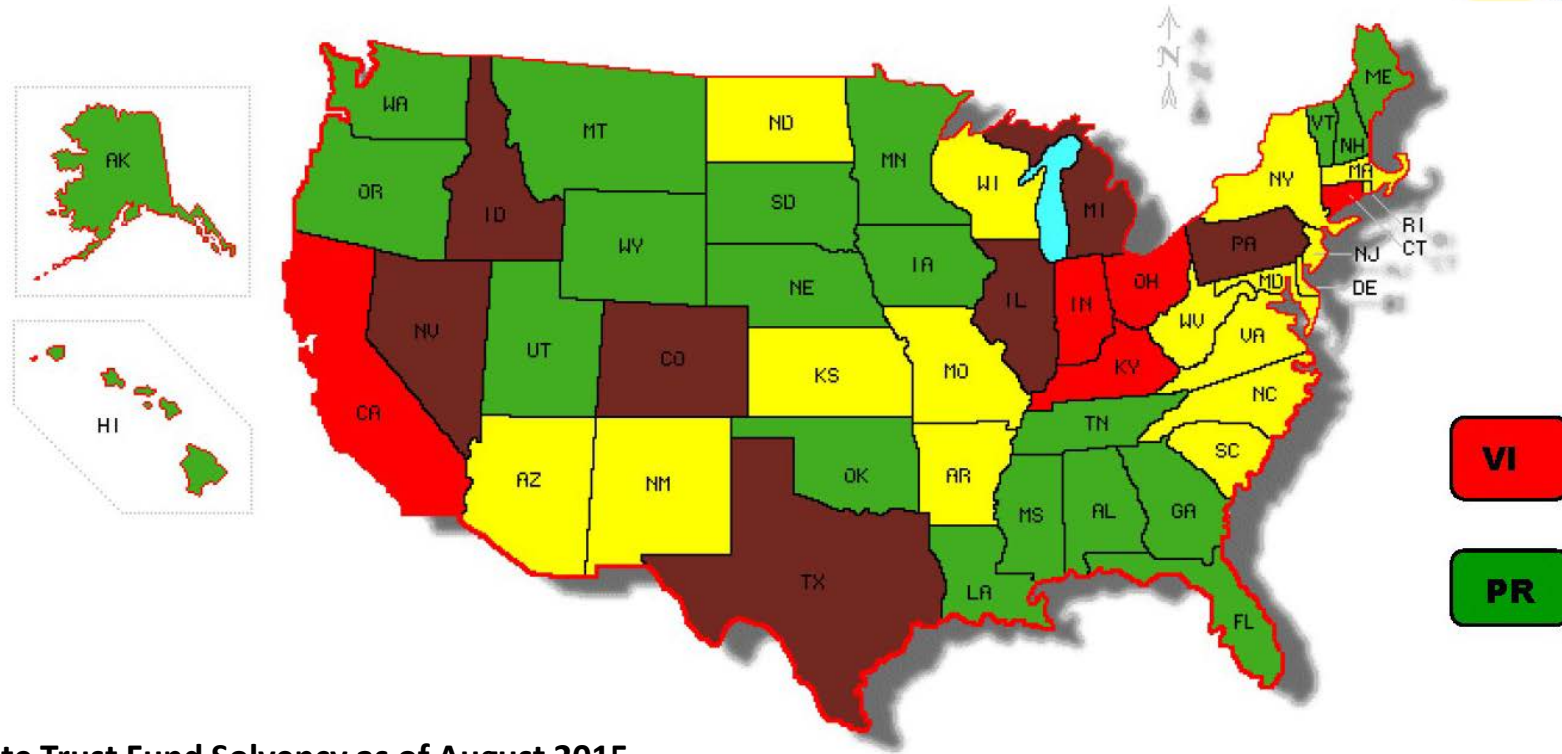
1601 18th Street, NW, Suite 1, Washington, DC 20009 • Phone 202-248-4650 • Fax 210-630-4365

FUTA Overview



- Federal Unemployment Tax (FUTA) designed to help fund UI Admin – codified under U.S.C. Title 26 Chap 32
- 6% rate with fixed \$7,000 taxable wage base; effective rate after applying 5.4% credit is 0.6%
- Due to state needs to borrow Title XII loans from Fed to fund their State UI programs, many states triggered FUTA Credit Reductions – involuntary repayment
- States with Title XII loans for 5 years trigger additional reduction via Benefit Cost Reduction (BCR) factor

State by State Trust Fund



State Trust Fund Solvency as of August 2015.

Map taken from July 2015 SUCAP Report,
based on US DOL UI data quarterly summary
charts & SUCAP Reports.

Red = borrowing as of 8/4/15.

Brown = using ER-financed bonds to repay Title XII loans

Yellow = less than 6 mos. of positive balances.

Green = more than 6 mos. of benefits.

State Solvency Health Update



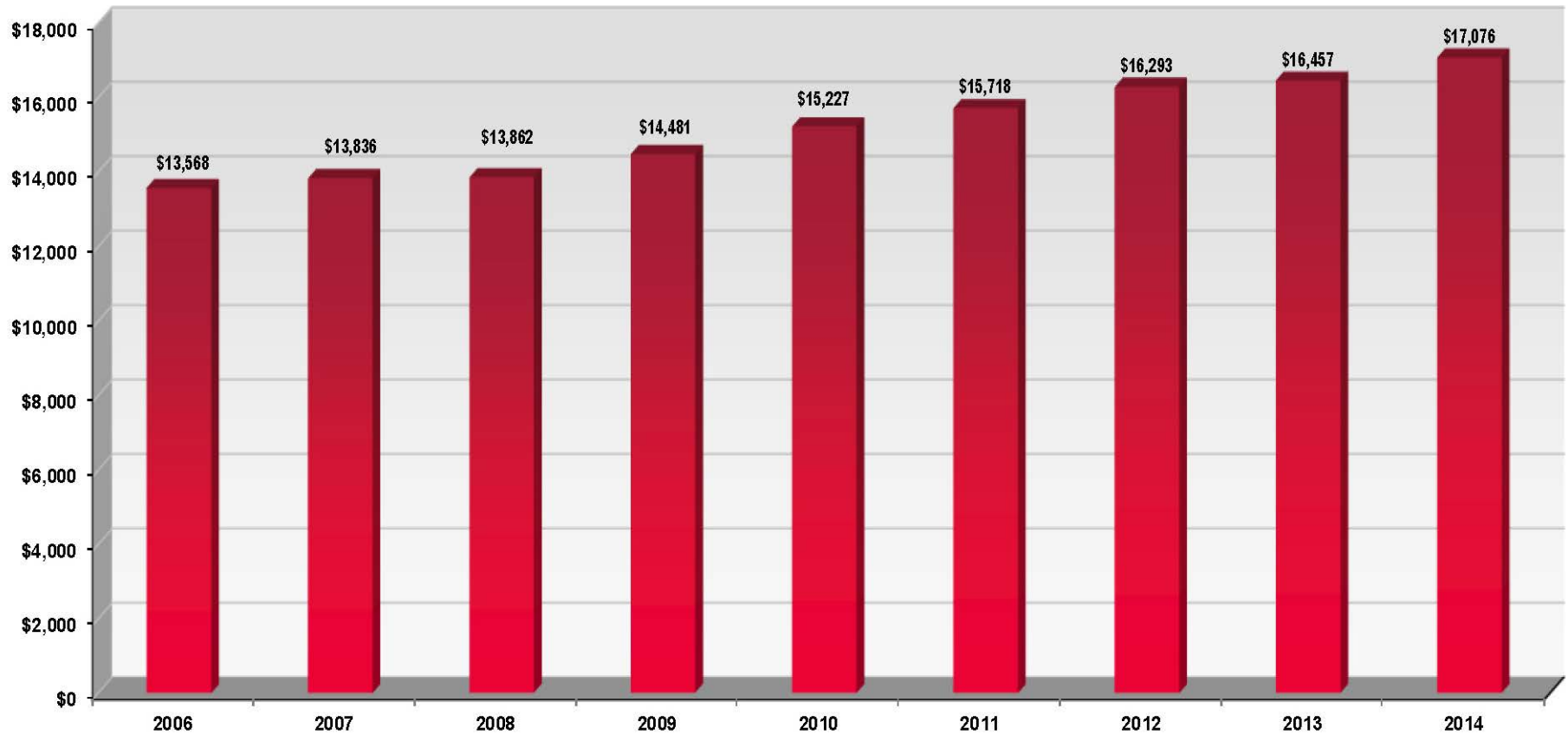
US DOL ETA [UI Actuary Report](#) (July 2015):

- Projected 2015 FUTA Rates – “potential” BCR add-ons for 8 states
- State Trust Fund Solvency vs. US DOL Guidelines – only 17 states meet guidelines
- In 2010, \$1.96B of \$42B in state UI debt (4.66%) was private market
- By 2014, \$8.92B of (then) total \$23B (38.78%) was private market
- In 2015 new federal standards eliminate interest free loans to states with outstanding debts

The FY 2016 Budget Key Points:

- Increase FUTA tax rate from 0.6% to 0.8% in CY 2016 (effectively increases base from \$42 to \$56 per EE for 2016 in all states - 33.33% increase).
- States would be required to increase unemployment tax bases from as little as \$7,000 to \$40,000 (471% increase). Forces states to dramatically cut contribution rates or pass astronomical UI tax increase to ERs.
- In 2017, States would be req'd to have a min. tax equiv. to 0.175% on a \$40,000 tax base (\$70 per EE) that would increase indefinitely based on avg. wage increases.

UI Tax Rate Trends



...but average taxable wage bases continue to increase (up over \$17K in 2014)

Source: DOL

FUTA Credit Reduction & “BCR”



Potential 2015 FUTA Credit Reductions from U.S. DOL (July, 2015)

These states had Title XII advance balances on Jan. 1, 2015 and are potentially subject to a reduction in FUTA credit on their IRS Form 940 for 2015, if the outstanding advance is not repaid by Nov. 10, 2015:

	2015 Potential				Applied For
	Credit Reduction	2015 Potential	2015 Potential	2015 Potential Total	FUTA Credit Reduction
State ⁽¹⁾	Due to Outstanding Advance ⁽²⁾	"2.7 add-on" ⁽³⁾	"BCR add-on" ⁽⁴⁾	Credit Reduction ⁽⁵⁾	Relief ⁽⁶⁾
California	1.5%	0.0%	1.4%	2.9%	BCR Waiver
Connecticut	1.5%	0.0%	0.6%	2.1%	
Indiana	1.8%	0.0%	0.9%	2.7%	BCR Waiver
Kentucky	1.5%	0.0%	0.6%	2.1%	BCR Waiver/ FUTA Cap
New York	1.5%	0.0%	0.0%	1.5%	
North Carolina	1.5%	0.0%	0.8%	2.3%	
Ohio	1.5%	0.0%	1.1%	2.6%	BCR Waiver
South Carolina	1.8%	0.0%	0.3%	2.1%	
Virgin Islands	1.5%	0.0%	1.6%	3.1%	BCR Waiver

(1) These states have passed at least two consecutive January 1's with an outstanding Federal advance and are therefore subject to a FUTA credit reduction.

(2) For each Jan. 1 a state passes with an outstanding advance, following the second one, ERs in the state are subject to an additional 0.3% reduction in FUTA credit.

(3) Following their third Jan. 1 with an outstanding advance states are subject to an additional FUTA credit reduction called the 2.7 Add-on. A description of this add-on is in FUTA 3302(c)(2)(B).

(4) These states are also potentially subject to the Benefit Cost Rate (BCR) additional credit reduction formula for having passed five consecutive Jan. 1's with an outstanding Federal advance- FUTA section 3302 (c) (2).

(5) The FUTA credit reduction for 2015 is calculated by adding the credit reduction due to having an outstanding advance plus the reduction from the 2.7% add-on or the BCR add-on, which if it is zero is replaced by the 2.7 add-on.

(6) A state may apply for relief from a reduction in its FUTA credit under section FUTA 3302. The deadline for application of relief for all types was July 1, 2015.

(7) Final determination of the FUTA credit reduction will not be made until following the Nov. 10, 2015 repayment deadline.

UI Tax Rate Determination



- Primary Determination methods:
 - Reserve Ratio (UI reserve balance / avg taxable payroll)
 - Benefit Ratio (UI benefit charges / taxable payroll)
- New Employer UI Rate
- Min – Max UI rates
 - Max UI rate no less than 5.4%
- Succession
 - UI Transfer of Experience
- State Rate Schedule adjustments
 - Varies by overall UI trust fund balance
- UI Voluntary Contributions

The Empire State (NY): UI Overview

- Unemployment Rate (July, 2015): 5.5%
- Trust Fund **Positive Balance** (July, 2015): \$8,074,000
- '15 Taxable Wage Base: \$10,500 (and rising)
- '15 UI [Tax Rates](#) 2.1% min – 9.9% max
 - 4.1% New ER UI
- Paid back Title XII Federal UI loans!
- '15 [Min/Max](#) Weekly Benefit \$100/\$420 (and rising)
- [State Information Data Exchange System](#) (“SIDES”) UP
- Voluntary Contribution state



The Garden State (NJ): UI Overview

- Unemployment Rate (July, 2015): 6.1%
- Trust Fund **Positive Balance** (July, 2015): \$255,988,000
- '15 Taxable Wage Base: \$32,000
- FY16 UI [Tax Rates](#) : 1.2% min – 7% max
 - New ER UI rate: 3.4%
- '15 [Min / Max](#) Weekly Benefit \$99-646
- Voluntary Contribution state



The Garden State (NJ): UI Updates

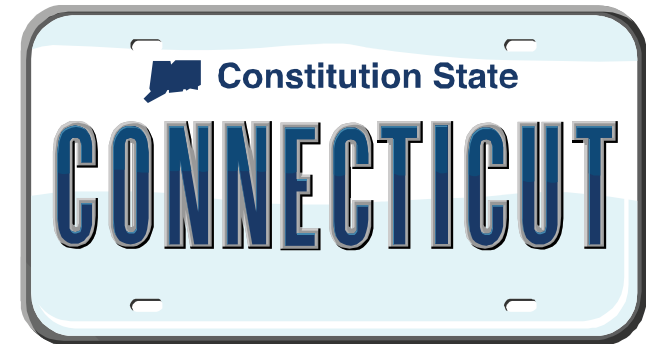


Signed legislation 2014 thru July 2015

- NJ AB3812 - requires electronic notification of death record to Dept. to reduce UI fraud
- NJ AB4189 - modifies short-time unemployment benefit law
- NJ SB3097 - permits employee leasing companies to use ELC experience rate or that of member companies
- NJ SB1622 - withholding of state payments to vendors for delinquent UI and disability taxes
- NJ SB2414 - amends DOLWD personnel access to UI claims receipt and processing system
- NJ SB2082 - amends UI eligibility when claimant leaves work & subsequently laid off from work

The Constitution State (CT): UI Overview

- Unemployment Rate (July, 2015): 5.7%
- Trust Fund Loan Balance (Sept 2015): **-\$102M**
- '15 Taxable Wage Base: \$15,000
- '15 [Tax Rates](#) 1.9% min – 6.8% max
 - New ER UI Rate: 4.9%
- '15 Potential FUTA Tax rate: 2.1%
 - 1.5% Basic FCR + 0.6% BCR add-on
 - Potential total FUTA cost per EE: \$189
- '15 Min/Max Weekly Benefit \$15 - 669



The Constitution State (CT): UI Updates



- CT HB6707 Signed by Governor 7/2/15; prevents ER's base period account from being charged for unemployment benefits if claimant has been discharged or suspended because claimant lost their operator's license as a result of failing a drug / alcohol test while off duty.
- CT is the only state subject to BCR add on (0.6%) that has not applied for a waiver.
 - This is the second year CT has neglected to request a waiver.

The Golden State (CA): UI Overview

- Unemployment Rate (July 2015): 6.3%
- Trust Fund Loan Balance (Sept 2015): - **\$5.8B**
- '15 Taxable Wage Base: \$7,000
- '15 [Tax Rates](#) 1.5% min – 6.2% max
 - Schedule "F+"
 - 3.4% New ER rate
- '15 Potential FUTA Tax Rate: 2.9%
 - 1.5% Basic FCR + 1.4% BCR add on
 - \$203 addtl FUTA cost due to credit reduction and BCR
- '15 [Min/Max](#) Weekly Benefit \$40-450



The Golden State (CA): UI Updates



- California is subject to the BCR add-on but has applied for a waiver.
 - Estimated BCR add on for 2015 is 1.4%..
 - If the BCR waiver is approved, the net cost is potentially \$147 per EE; otherwise it could be \$245 per EE.
 - Final determination will be made by DOL after Nov 10, 2015.
- Uber & Lyft decisions on worker classification
 - EE vs. independent contractor
- UI appeals / hearings – SB 1314 enacted, extends deadline to file appeals
- Administrative changes to law on UI Transfer of Experience when assets are acquired
- SB 1131 enacted - members of LLC are not employees

The Buckeye State (OH): UI Overview

- Unemployment Rate (July, 2015): 5%
- Trust Fund Loan Balance (Sept 2015): - \$875M
- '15 Taxable Wage Base: \$9,000
- '15 [Tax Rates](#): .3% min – 10.8% max
 - New ER UI Tax Rate: 2.7%
- '15 Potential FUTA Tax Rate: 2.6%
 - 1.5% Basic FCR + 1.1% BCR add on
 - \$182 add'l FUTA cost due to credit reduction and BCR '15
- Voluntary Contribution state



Key Federal UI Legislation

- 2004 SUTA Dumping Act
- 2011 TAAE UI Integrity Act (Sec. 252)
- 2012 ATRA
 - EE SS tax rate return to normal



Audience Questions



- Changes in ET Structure?
- M&A Activity

2004 SUTA Dumping Prevention Act



- SUTA Dumping (a.k.a. “unemployment tax avoidance”) occurs by shifting EEs to a less-taxed entity to avoid paying a higher UI tax rate
- Migration of EEs between legal entities (M&A, consolidation, etc.) may trigger time-sensitive mandatory compliance reporting – **misunderstood & often missed!**
- Penalties for missing or incorrect reporting can include max UI ratings; civil &/or criminal penalties
 - **SUTA Dumping Detection Software for enforcement**
- Read [Employer’s M&A “To Do” List](#)

2011 Federal Act – UI Integrity



- Follow on to 2009 Executive Order to reduce improper UI payments
- Under UI Integrity rules, states must not relieve employers of charges when they fail to respond **timely** or **adequately** to UI claims related agency requests
 - **Pattern of Failure as little as two instances.**
- Employers cannot collude with employee to misuse unemployment claim system
- Each state has unique rules; method of enforcement being formulated

“Pattern of Failure” Financial Impact Example



Case Study:

- ER With 100 Separations/Yr; “Pattern of Failure” classification
- Benefit\$ paid to claimant prior to successful Appeal by ER.

FACTORS	FIGURES
Weekly benefit amount	Assume \$300
Time to appeal	8 weeks
# of claims lost on initial determination & won by ER on Appeal	10 (out of 100 total separations)
Charge to ER UI account	\$24,000 (\$2,400 x 10 claims) now NON-RECOVERABLE due to “Pattern of Failure.”
Additional Exposure / Negative Impact	<ul style="list-style-type: none">• May raise AUDIT RISK for other UI areas?• May elevate ER experience rating

"Pattern of Failure" Example Letter



North Carolina Department of Commerce Division of Employment Security

Pat McCrory, Governor
John E. Skvarla, III, Secretary

Dale R. Folwell, Assistant Secretary

Page: 2

How Can You Avoid Being Charged for a Claimant's Erroneous Payments?

You or your agent must complete and return your response to every Form NCUI 500AB, our written request for information on unemployment insurance claims, or an equivalent method such as UI SIDES. You must complete and return a response:

- * **Timely:** You or your agent have a maximum of fourteen (14) calendar days to complete and return your response. This period begins on the date we send the separation notice to you. Each form is considered filed when it is received by DES. Initial determinations of claimant eligibility (and unemployment payments) may begin on the fifteenth day.
- * **Adequately:** You or your agent must provide adequate information. A working definition of "adequate information" is a response providing sufficient facts to enable DES to make the correct initial determination under North Carolina law.
- * **Every Time:** Even if you do not wish to protest a claim, you must complete and return your response adequately and timely every time DES requests a response.

What Methods Will Help Improve Your Timeliness and Adequacy of Responses?

If you or your agent are now using the Form NCUI 500AB to respond to our requests, an online alternative may help you respond **adequately and timely**. See enclosure for the online alternative, **UI SIDES** (Unemployment Insurance State Information Data Exchange System). You may sign up for UI SIDES on the Employer Services section of our website at www.ncesc.com.

You or Your Agent's Pattern of Unsatisfactory Responses is Detailed Below

You reached the "2 or 2%" threshold due to the following responses to our requests for information (NCUI 500AB or equivalent) during the period from August 1, 2013-July 31, 2014.

Claimant Name	SSN	Due Date	Type of Response
		07/03/14	NO RESPONSE
		06/26/14	NO RESPONSE
		07/23/14	NO RESPONSE
		08/04/14	NO RESPONSE
		07/17/14	NO RESPONSE
		08/14/14	NO RESPONSE
		04/03/14	NO RESPONSE
		06/18/14	NO RESPONSE
		01/28/14	NO RESPONSE
		02/04/14	NO RESPONSE
		07/15/14	NO RESPONSE
		06/13/14	NO RESPONSE
		05/13/14	NO RESPONSE
		07/28/14	NO RESPONSE
		06/30/14	NO RESPONSE

Adequate Responses	:	165
No Response	:	15
Late Response	:	0
Inadequate Response	:	0
Adequate Responses	:	165

Total Failed Responses	:	15
Total Requests	:	180

Percentage	:	8.0%
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F0360D 08/2014

Please contact our Employer Call Center with any questions at (919) 707-1150 or toll

Official Notification:

This determination is to notify you that you or your third party agent established a pattern of submitting untimely or inadequate responses to our requests for information on unemployment insurance claims (Form NCUI 500AB) during the previous charging period (August 1, 2013-July 31, 2014).

Will Your Account Be Charged?

Because of this pattern of unsatisfactory responses, if you or your agent do not respond to our requests with timely and adequate responses during the next charging year (August 1, 2014-July 31, 2015) there *could be an increase in the amount of money you owe the Division of Employment Security (DES)*. During the next charging year, if you have a claim which receives an erroneous payment because of your untimely or inadequate response, your account will be charged.

Explanation of New Law (North Carolina General Statute 96-11.4):

Beginning August 1, 2014, employers who have established a *pattern* of submitting untimely or inadequate responses during the previous year will be charged for claims receiving an erroneous payment during the following year, if it is determined that the untimely or inadequate response to our request for information caused that erroneous payment.

In the past, the employer would not have been charged for this failure.

What is a Pattern of Submitting Untimely or Inadequate Responses?

Under the law, DES must consider the number of times you or your agent failed to respond adequately and timely in relation to the total number of requests made. A *pattern* is established if the number of failures during the previous year is more than two (2) or two percent (2%), whichever is greater.

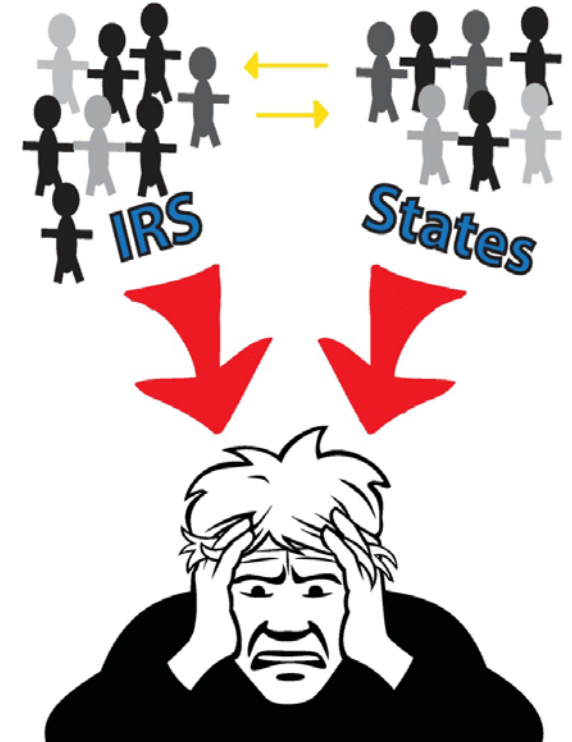
Compliance & Enforcement: UI Integrity

- Unemployment Claims “Trigger”
 - Claims filings from an EE associated with a M&A event may trigger an “evaluation” of the succession reporting due to confusion surrounded which ER responsible for benefit charge.
- “SDDS” (SUTA Dumping Detection Software)
 - Many States using SDDS to “catch” EE migrations.
 - Flags accounts for review to see if UI succession reporting completed.
- “QETP” (Questionable Employment Tax Practices)
 - Under QETP, IRS and 37 states sharing information, and specifically focusing on ET for audits.
 - As of mid-2012, QETP has resulted in audits of 11,000 employers.



Audit Alert: Inter-Agency Info Sharing

- Questionable Employment Tax Practices “QETP” Initiative
 - 37 States & IRS
 - 12,000+ business examined thru ‘12
- Fed & state info sharing, data mining & cross-agency task forces
- Significant focus on worker classification
- Significant incentives to states to aggressively audit



UI Tax Optimization Focus



- UI Cost Control
- UI Retrospective Review

UI Benefit Charges: Material Expense



UC-280 (Rev. 3/11/02)

1. DATE MAILED 06/19/2014	
3. CLIENT'S SOCIAL SECURITY NUMBER [REDACTED]	
4. JOB CENTER 05-0	5. WEEK ENDING DATE 06/14/2014

NOTICE OF POTENTIAL LIABILITY

MERIT RATING UNIT
CONNECTICUT DEPARTMENT OF LABOR
WETHERSFIELD, CT 06109-1114
TEL: (860) 263-6705 FAX: (860)-263-6723
www.ctdol.state.ct.us

2. PROTEST PERIOD EXPIRE

07/10/2014

7. EMPLOYER'S NAME AND ADDRESS

[REDACTED]
[REDACTED]
% EMPLOYMENT TAX SERVICING CORP
246 GOOSE LN STE 102
GUILFORD CT 06437-2186

6. CLIENT'S NAME AND ADDRESS

[REDACTED]
[REDACTED]
[REDACTED]

8. EMPLOYER'S REGISTRATION NO.

00-025-15

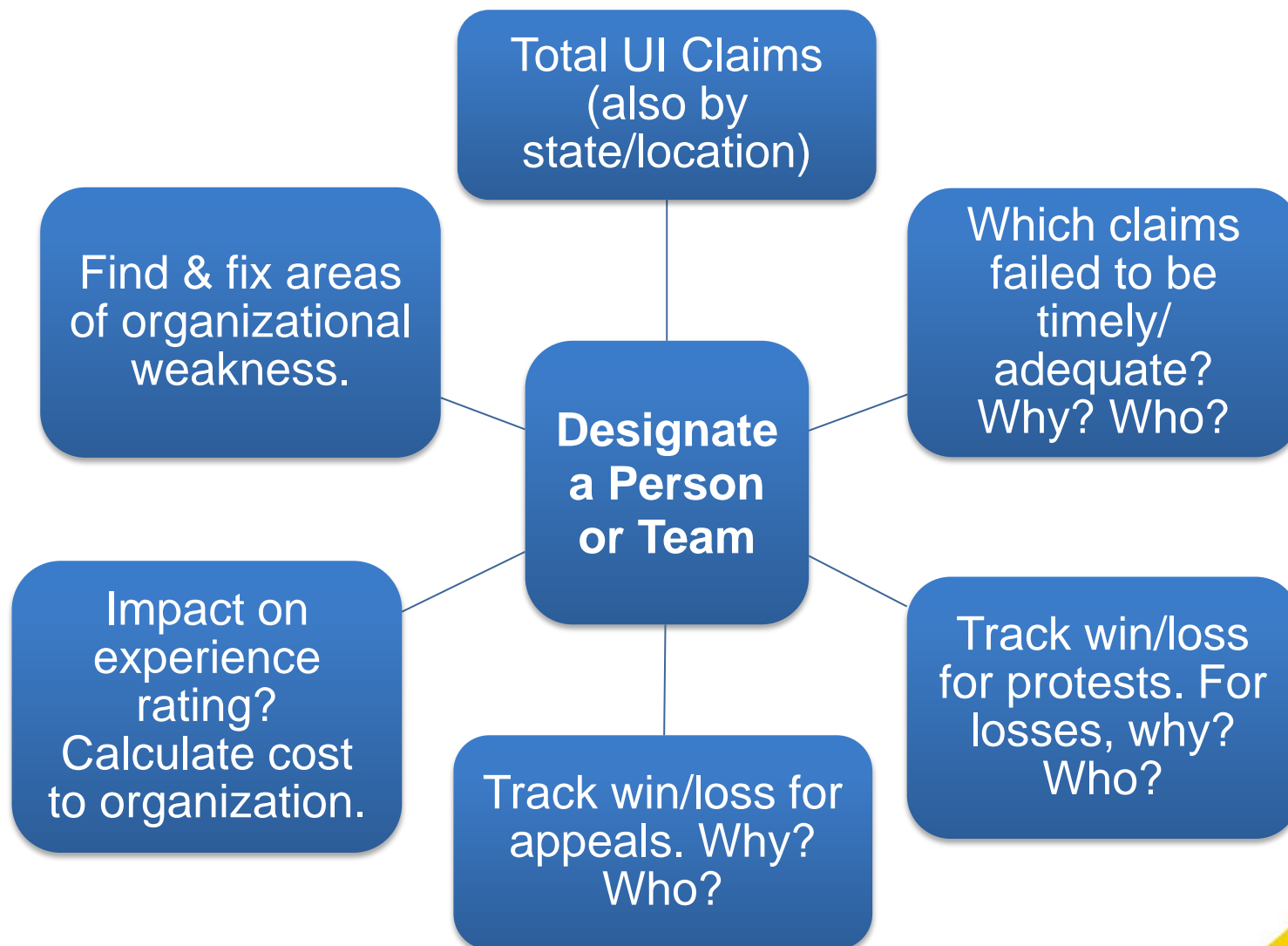
9. BENEFIT YEAR		10. SUB DATE		UNEMPLOYMENT COMPENSATION PAYABLE			
EFFECTIVE DATE	ENDING DATE			11. WEEKLY BENEFIT AMOUNT	12. WEEKLY BENEFIT RATE	MAXIMUM WEEKS	13. MAXIMUM ENTITLEMENT
05/18/2014	05/16/2015	05/27/2014		\$501		26	\$
14. BASE PERIOD WAGES PAID IN YOUR EMPLOY		QUARTER 1 YEAR 2013	QUARTER 2 YEAR 2013	QUARTER 3 YEAR 2013		QUARTER 4 YEAR 2013	
		\$9,117.37	\$12,426.55	\$11,167.23		\$13,646	
15. TOTAL WAGES PAID BY YOU		16. YOUR WEEKLY CHARGE		17. YOUR MAXIMUM POTENTIAL CHARGE			
\$46,357.24		\$501		\$13,026.00			

130

THIS ENTIRE SIDE MUST BE SENT WHEN RESPONDING BY FAX.

DO NOT RETURN BY MAIL IF PROTEST IS FAXED

UI Integrity Oversight Plan



Best Practices

“ACT.”

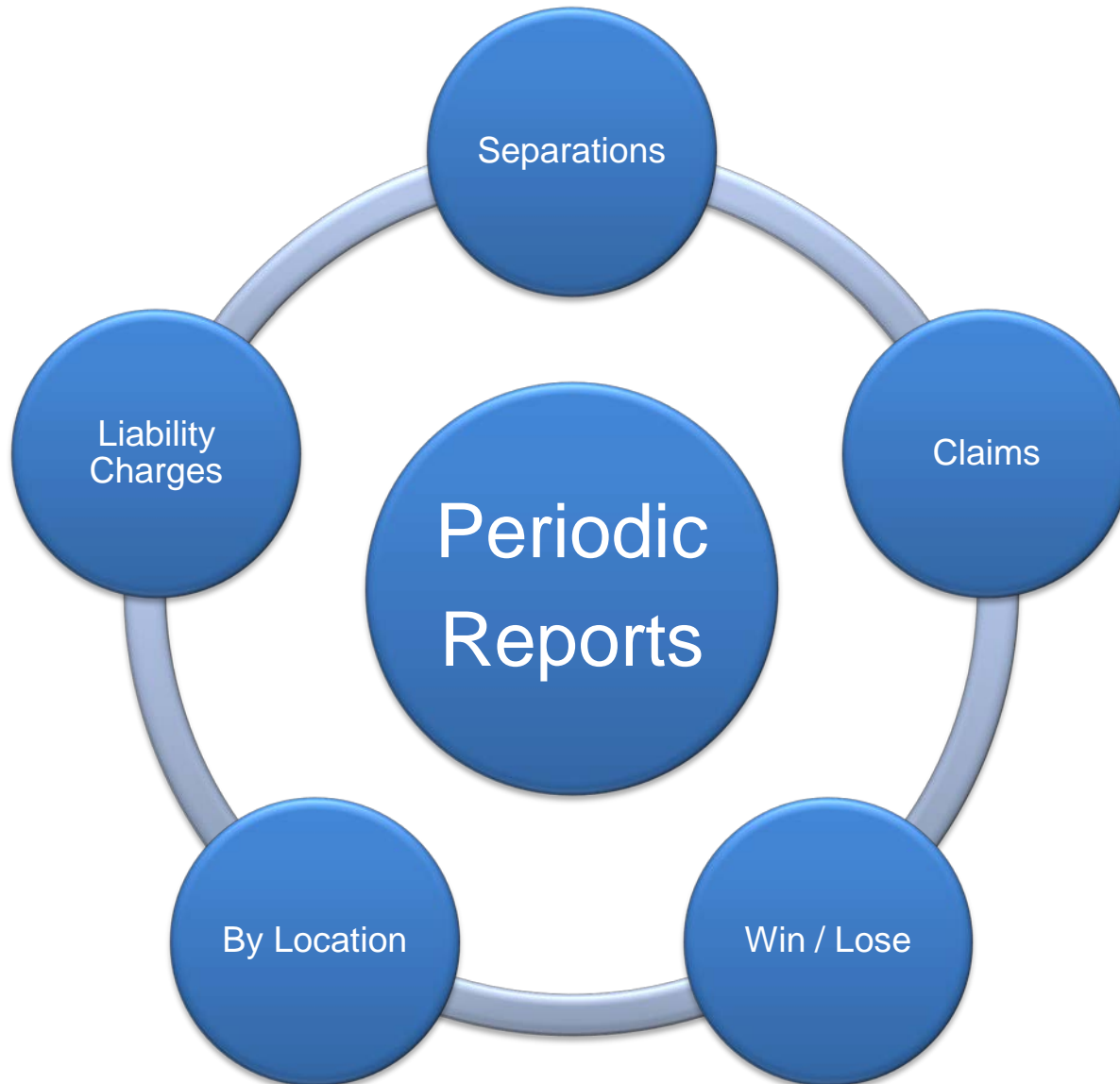
Provide information to UI
agencies that is:

Accurate

Complete

Timely

UI Claims Admin: Reporting



“Float like a butterfly, sting like a bee. You cannot hit what you cannot see.”

— Muhammad Ali

General Evaluation

- Contact ALL UI jurisdictions
- Perform account balancing (per state records) – QTR by QTR rearward review.
- Determine what credits found eligible for refund & if debits, found if correct.
- Research for any missing / incomplete or untimely reporting on the account.
- Review all M&A past 3 years.
- Help reduce source of potential penalty or increased UI tax expense.



Photo credit: [motone](#)

UI Resources



Emptech's UI Tips

- 10 Questions for [Internal SUTA Dumping Assessment](#)
- How Nonprofit Employers Can [Reduce UI Costs](#)
- FAQs on [Employment Tax Compliance & Savings in M&A](#)

Go [here](#) to download three pages of UI Tips from Emptech.

Emptech Blog

[Go here](#) to see the latest news on HR, Payroll and Employment Tax topics.

Is Your UCM Broken?

[Download](#) this one page checklist to assess the state of your UI Claims Administration

Get our Top 15 Tips for M&A Tax Treatment

Get them [here](#).

Thank You!



Questions??

Contact:

(203) 738-0545 / r.henderson@emptech.com

- Employment Tax Consulting
- UI Claims Management
- Credits
- Talent Management
- Electronic I-9
- Verification of Employment