

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF ECONOMIC SECURITY

1. **Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**

Unemployment Insurance Tax: Penalty Assessment. The substantive policy statement number is 17P-C015.

2. **Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

The substantive policy statement was issued and will become effective upon filing with the Office of the Secretary of State.

3. **Summary of the contents of the substantive policy statement:**

The substantive policy statement describes the Department approach to the application of employer penalties for deficient or delinquent filing of unemployment insurance reports.

4. **Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

A.R.S. § § 23-738 (A) and 23-738.01 (A)

Arizona Administrative Code (A.A.C.) R6-3-1704 (D)

5. **Statement as to whether the substantive policy statement is a new statement or a revision:**

This is a new substantive policy statement.

6. Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:

Name: Beth Broeker

Address: Arizona Department of Economic Security

1789 W. Jefferson, Site Code 837A

Phoenix, AZ 85007

Phone: 602-542-6555

E-mail: bbroeker@azdes.gov

Policy Statement
Number: 17P-C015
Unemployment Insurance Tax
Date Last Revised: May 19, 2010

SUBJECT

Penalty assessment.

AUTHORITY

Deficiency assessments are issued to an employer under A.R.S. § 23-738.01 (A) which states that “[i]f the department finds through its audit or claims-taking procedures that the return filed by an employer is deficient, the department may compute the amount required to be paid on the basis of any information in its possession...[and] a penalty of one-tenth of one per cent of the difference between the wages paid during the quarter and the wages reported during the quarter; but not more than two hundred dollars and interest as prescribed by § 23-736.”

Delinquent assessments are issued to an employer under Arizona Revised Statute (A.R.S.) § 23-738 (A) which provides that “[i]f an employer neglects or refuses to make a return as required by this chapter, the department shall make an estimate based upon information in its possession...”

In cases of delinquent assessments, A.R.S. § 23-723 (A) states that if an employer who fails to timely file a wage report required by the Department, the employer shall pay (subject to waiver for good cause) “a penalty of one-tenth of one per cent of the total wages paid during the quarter, but not less than thirty-five dollars, nor more than two hundred dollars.”

Arizona Administrative Code (A.A.C.) R6-3-1704 (D) states that when an employer is delinquent “a penalty as prescribed in A.R.S. § 23-723 (A)” applies.

Also, A.A.C. R6-3-1703 (B) (1) states that a quarterly contribution and wage report shall include, but is not limited to, the following information:

- a. Total number of employees each month of the quarter on all types of payrolls for the payroll period which includes the 12th of each month in the quarter;
- b. Total wages paid in the quarter;
- c. Total wages paid in the quarter which are in excess of the first \$7,000 paid to each employee within any calendar year which begins after December 31, 1982; and for quarters prior to January 1, 1983, total wages paid in the quarter which are in excess of the first \$6,000 paid to each individual employee within the calendar year;

- d. Total taxable wages paid in the quarter;
- e. A listing of employees which includes each employee's name, social security number, and total gross wages paid that employee in the quarter."

DISCUSSION AND CONCLUSION

A delinquent assessment will be issued to an employer by the Department when an employer fails to file a report or files an incomplete report i.e., the employer indicated no wages were paid for the quarter, but it is later determined by an audit or claims-taking procedure that wages were paid, or the employer failed to file a report, or the employer filed a substantially incomplete report.

A paper quarterly report is considered to be filed only if it is on the form that was provided by the department or on a substitute form that previously was approved by the department, and only if all information requested on the form is completed, including but not limited to the employer's correct state and federal Unemployment tax account numbers and the count of all full- and part-time employees covered by Unemployment Insurance (UI) who worked during or received pay subject to UI taxes for the payroll period that includes the 12th of each month of the quarter being reported.

The employer is subject to a penalty of one-tenth of one percent of the total wages paid during the quarter, but not less than thirty-five (\$35) dollars or more than two hundred (\$200) dollars pursuant to A.R.S. § 23-723 (A).

However, in cases where the employer was issued a deficient assessment because the employer failed to report all wages and the Department subsequently determined that additional wages were paid, then a penalty of one-tenth of one percent of the deficient wages paid during the quarter, but not more than two hundred (\$200) dollars is assessed against the employer pursuant to A.R.S. § 23-738.01.

In addition, the delinquent statute (A.R.S. § 23-738 (A)) and deficient statute (A.R.S. 23-738.01 (A)) provide that in cases of fraud or intent to evade payment of contributions, the Department shall add to the amount due a penalty of twenty-five (25) percent. For example, a prior Determination of Liability (Form UC-16A) was issued by the Department to the employer and became final, but the employer subsequently failed to comply with the reporting requirements.

Both statutes accord the employer appeal rights by permitting the employer to file a written petition for reassessment within fifteen (15) days after receiving the notice of assessment(s) with the Department. Furthermore, both statutes and A.A.C. R6-3-1704 (D) permits the Department to waive penalties and interest upon a showing of good cause. Good cause is addressed in Policy Statement 17P-C106. However, in the event of fraud or evasion, there is no statutory authority for waiver of penalties and interest.

REFERENCES

A.R.S. §§ 23-738 (A) and 23-738.01 (A).
Arizona Administrative Code (A.A.C.) R6-3-1704 (D).

AGENCY RECEIPT

NOTICE OF SUBSTANTIV E POLICY STATEMENT

1. **Agency Name:** Department of Economic Security
2. **Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**

Unemployment Insurance Tax: Penalty Assessment. The substantive policy statement number is 17P-C015.