

**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: Payrolling Involving Reimbursable Employers. The substantive policy statement number is 17P-C029.

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's approach to the treatment of employers and third party payors in cases involving reimbursable employers relative to Unemployment Insurance Tax and the corresponding legal authority.

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. § § 23-614 (C), and 23-728 through 23-730

Southwestern Teamsters Security Fund v Department of Economic Security, 157 Ariz. 3258  
(1988);

Federal Unemployment Tax Act (F.U.T.A.), 26 U.S.C. 3306

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:**

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Policy Statement  
Number: 17P-C029  
Unemployment Insurance Tax  
Date Issued: May 19, 2010

### SUBJECT

Payrolling involving reimbursable employers.

### AUTHORITY

A 501 (C) (3) employer or governmental employer can elect to become a reimbursable employer under the provisions of Arizona Revised Statute (A.R.S.) § 23-750 for a period of not less than three (3) consecutive taxable years by filing a written notice of its election with the Department.

Arizona Revised Statute (A.R.S.) § 23-614 (C) provides that if “an individual who performs services in or for a particular employing unit shall not be deemed to be in the employment of such employing unit if such individual’s wages for services in or for the particular employing unit are paid by another employing unit, and if the contributions required by this chapter on such wages are paid by such other employing unit.”

It is important to note that the Department computes annual contribution rates in accordance with A.R.S. § 23-728 through § 23-730 which is predicated upon the employer being a rated employer.

### DISCUSSION AND CONCLUSION

Payrolling is addressed in A.R.S. § 23-614 (C). Payrolling may occur in the following circumstances: First, the 501 (C) (3) employer or governmental employer is a reimbursable employer being payrolled by a payrolling entity that is also a reimbursable employer. Second, the 501 (C) (3) or governmental employer is a rated employer being payrolled by a payrolling entity that is also a rated employer.

Because of the rate calculation provisions of A.R.S. §§ 23-728 through § 23-730 for rated employers, the Department will not permit payrolling between a rated and reimbursable employer and vice-versa because the tax rate calculation for a rated employer necessarily includes payment of UI tax whereas a reimbursable employer is not subject to UI tax.

Payrolling may also occur when a third party makes payments on behalf of an employer’s employees. Although Arizona’s statutes were amended in 1985 to include short-term sickness and disability payments as “wages” in conjunction with the Internal Revenue Code, “[t]he Arizona statutory scheme was not similarly amended to provide that a third-party payor should be treated as an employer with respect to these newly-defined wages.” Southwestern Teamsters Security Fund v Department of Economic Security, 157 Ariz. 358, 757 P.2d 1067, 1988 Ariz. App. LEXIS 243, 11 Ariz. Adv. Rep. 72 at 360.

The Court then reasoned that because the wages at issue were subject to federal unemployment tax (FUTA), the third party payor would be treated as an employer with regard to the payments analogizing that once the “wages” ceased to be paid the “employment relationship” or “work relationship ended.”” Id. at 362.

In the event the third party payor does not report and pay the taxes on the sick payments, the Department will identify the unreported amounts and hold the employer, not the third party payor, responsible for the taxes.

#### REFERENCES

A.R.S. §§ 23-614 (C), § 23-728 through § 23-730

Southwestern Teamsters Security Fund v Department of Economic Security, 157 Ariz. 3258 (1988)

Federal Unemployment Tax Act (F.U.T.A.), 26 U.S.C. 3306

## AGENCY RECEIPT

### NOTICE OF SUBSTANTIV E POLICY STATEMENT

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Unemployment Insurance Tax: Payrolling Involving Reimbursable Employers. The substantive policy statement number is 17P-C029.