

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: Statute of Limitations. The substantive policy statement number is 17P-C104.

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 rationale and treatment of Unemployment Insurance program employer accounts with respect to statute of limitations.

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. § § 23-743 (A) (E) and 23-613

Federal Unemployment Tax Act (FUTA) 26 USC 6501

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-C104
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

Statute of limitations.

AUTHORITY

Arizona Revised Statute (A.R.S.) § 23-743 (A), (D) and (E) provides that the Department will not establish amounts due after three (3) years from the date the contributions, payments in lieu of contributions, interest or penalties become delinquent which is determined by the date of the Department's assessment or determination with two (2) exceptions.

DISCUSSION AND CONCLUSION

The Department will review the employer's records for potential liability for the last four (4) years the employer has been in business to establish coverage beginning with the third year. However, if liability is not met in the third year, but was met in the fourth year, the employer's account should be established based upon A.R.S. § 23-613 that refers to employment of one person for twenty (20) weeks or payment of \$1500 in a calendar quarter in either the current or preceding calendar year.

A.R.S. § 23-743 (D) and (E) provide two (2) notable exceptions to the running of the three (3) year statute of limitation period: First, in cases of fraud or intent to evade the taxes owed. Second, in cases where the Internal Revenue Service has determined that an Arizona employer's (Federal Unemployment Tax Act) FUTA liability started before the three (3) year period. In this second scenario, the employer's UI Tax liability shall be established on a date commensurate with the start of FUTA liability. In so doing, this will permit an employer to qualify for UI Tax credit against FUTA taxes assessed for quarters prior to the three (3) year statute of limitations.

In addition, with respect to ownership changes, transfers, and mergers that have occurred prior to the three (3) year statute of limitations and the application of A.R.S. § 23-743, it is imperative that the Department obtain accurate information with respect to the date(s) the changes occurred to correctly establish UI Tax liability, compute the applicable tax rate, and assist with collection efforts of the taxes owed.

REFERENCES

(A.R.S. §§ 23-743 (A) (E) and 23-613.
Federal Unemployment Tax Act (FUTA) 26 USC 6501

AGENCY RECEIPT

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