

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 2012
Finance Committee Substitute Adopted 6/22/06

Short Title: SUTA Modifications.

(Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE UNEMPLOYMENT TAX CONTRIBUTION RATE OF A BANKRUPT COMPANY WHOSE ASSETS ARE SOLD IN A BANKRUPTCY SALE IS NOT TRANSFERRED TO A COMPANY THAT BUYS THE ASSETS OF THE BANKRUPT COMPANY AND SHARES NO COMMON OWNERSHIP WITH THE BANKRUPT COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) reads as rewritten:

"(4) Transfer of account. –

- a. ~~Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been~~

1 made prior to the computation date falling within the calendar
2 year within which the effective date of such transfer occurs and
3 the account shall thereafter be used in the computation of the
4 rate of the successor employer for succeeding years, subject,
5 however, to the provisions of paragraph b of this subdivision.
6 Provided there shall be no transfer of account when (i) a person
7 or entity is not an employer at the time of the acquisition and
8 (ii) the person or entity acquired the business or account
9 primarily for the purpose of obtaining a reduced rate of
10 contribution.

11 1. Mandatory. ~~On or after August 1, 1988, whenever any~~
12 ~~individual, group of individuals, or employing unit, who~~
13 ~~or which, When an employer, as defined in~~
14 G.S. 96-8(5)b., in any manner succeeds to or acquires all
15 of the organization, trade, or business of another
16 employing unit as provided in G.S. 96-8, subdivision (5),
17 paragraph b, unit, the account of the predecessor shall be
18 transferred as of the date of the acquisition of the
19 business to the successor employer for use in the
20 determination of his the successor's rate of contributions.
21 This mandatory transfer does not apply when there is no
22 common ownership between the predecessor and the
23 successor, and the successor acquired the assets of the
24 predecessor in a sale in bankruptcy.

25 2. Consent. ~~Whenever any individual, group of~~
26 ~~individuals, or employing unit, who or which, When an~~
27 employer, as defined in G.S. 96-8(5)b., in any manner
28 succeeds to or acquires a distinct and severable portion
29 of the organization, trade, or business of another
30 employing unit as provided in G.S. 96-8, subdivision (5),
31 paragraph b, that unit, the part of the account of the
32 predecessor which that relates to the acquired portion of
33 the business shall, upon the mutual consent of the parties
34 concerned and approval of the Commission in
35 conformity with the regulations as prescribed therefor,
36 be transferred as of the date of acquisition of the
37 business to the successor employer for use in the
38 determination of his the successor's rate of contributions,
39 provided application for transfer is made within 60 days
40 after the Commission notifies the successor of his the
41 right to request such transfer, otherwise the effective date
42 of the transfer shall be the first day of the calendar
43 quarter in which such application is filed, and that after
44 the transfer the successor employing unit continues to

1 operate the transferred portion of such organization,
2 trade or business. On or after January 1, 2006, whenever
3 part of an organization, trade, or business is transferred
4 between entities subject to substantially common
5 ownership, management, or control, the tax account shall
6 be transferred in accordance with regulations. However,
7 employing units transferring entities with any common
8 ownership, management, or control are not entitled to
9 separate and distinct employer status under this Chapter.
10 Provided, however, that the transfer of an account for the
11 purpose of computation of rates shall be deemed to have
12 been made prior to the computation date falling within
13 the calendar year within which the effective date of such
14 transfer occurs and the account shall thereafter be used in
15 the computation of the rate of the successor employer for
16 succeeding years, subject, however, to the provisions of
17 paragraph b of this subdivision. No request for a transfer
18 of the account will be accepted and no transfer of the
19 account will be made if the request for the transfer of the
20 account is not received within two years of the date of
21 acquisition or notification by the Commission of the
22 right to request such transfer, whichever occurs later.
23 However, in no event will a request for a transfer be
24 allowed if an account has been terminated because an
25 employer ceases to be an employer pursuant to
26 G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date
27 of notification.

28 a1. A new employing unit shall not be assigned a discrete employer
29 number when there is an acquisition or change in the form or
30 organization of an existing business enterprise, or severable
31 portion thereof, and there is a continuity of control of the
32 business enterprise. That new employing unit shall continue to
33 be the same employer for the purposes of this Chapter as before
34 the acquisition or change in form. As used in this
35 sub-subdivision:

36 1. "Control of the business enterprise" may occur by means
37 of ownership of the organization conducting the business
38 enterprise, ownership of assets necessary to conduct the
39 business enterprise, security arrangements or lease
40 arrangements covering assets necessary to conduct the
41 business enterprise, or a contract when the ownership,
42 stated arrangements, or contract provide for or allow
43 direction of the internal affairs or conduct of the business
44 enterprise.

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2. A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Commission of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a

1 successor, the transferring employer shall thereafter pay the
2 standard beginning rate of contributions set forth in
3 G.S. 96-9(b)(1) and shall continue to pay at that rate until the
4 transferring employer qualifies for a reduction, reacquires the
5 account transferred or acquires the experience rating account of
6 another employer, or is subject to an increase in rate under the
7 conditions prescribed in G.S. 96-9(b)(2) and (3).

8 c. In those cases where the organization, trade, or business of a
9 deceased person, or insolvent debtor is taken over and operated
10 by an administrator, administratrix, executor, executrix,
11 receiver, or trustee in bankruptcy, such employing units shall
12 automatically succeed to the account and rate of contribution of
13 such deceased person, or insolvent debtor without the necessity
14 of the filing of a formal application for the transfer of such
15 account."

16 **SECTION 2.** This act is effective when it becomes law and applies to
17 acquisitions made on or after September 1, 2003.