




REGULATORY COMPLIANCE IN CORPORATE RESTRUCTURES




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Speaker


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Session Objectives

- › Connect state unemployment claims and tax management practices
- › Obtain an understanding of the “pre-acquisition” phases of the Employee Movement/M&A process
- › Understand the impact of transaction structure and timing on financial outcomes
- › Identify and quantify opportunities and compliance risk
- › Provide tools to assist your organization during your next Employee Movement/M&A event




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Employment Tax Types

SOCIAL SECURITY INSURANCE (FICA)	FEDERAL UNEMPLOYMENT INSURANCE (FUTA)	STATE UNEMPLOYMENT INSURANCE (SUI)
Tax Rate: 2017/2018 - 6.2% Wage Base: 2017 - \$127,200 2018 - \$128,400 Max Tax Cost: 2017 - \$7,886 2018 - \$7,961	Tax Rate: 2017/2018 - 0.6% ⁽¹⁾ Wage Base: 2017 - \$7,000 2018 - \$7,000 Max Tax Cost: 2017 - \$42 2018 - \$42	Tax Rate: 2017 - 2.25% ⁽²⁾ Wage Base: 2017 - \$17,993 ⁽³⁾ 2018 - \$18,103 ⁽³⁾ Est. Avg. Tax Cost: 2017 - \$405

1. Rate does not take into consideration the impact of FUTA credit reductions (CA) and VETRA's net FUTA tax rate of 2.4% for 2016.
2. Total SUI tax revenues for all taxing jurisdictions divided by total SUI taxable payroll, per the U.S. DOL.
3. Simple average of all taxing jurisdictions for 2016 and estimated simple average for 2017.

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Unemployment Tax Rates Are Impacted By Both Claims And Tax Management



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State Unemployment Tax Cost Comparison

Domestic Employment	Taxable Wages ⁽¹⁾	Taxable Payroll	Median Tax Rate ⁽²⁾	Estimated Tax Cost
50,000	\$18,103	\$905,150,000	2.25%	\$20,365,875
10,000	\$18,103	\$181,030,000	2.25%	\$4,073,175
1,000	\$18,103	\$18,103,000	2.25%	\$407,318
500	\$18,103	\$9,051,500	2.25%	\$203,659
100	\$18,103	\$1,810,300	2.25%	\$40,732

1. Simple average of all taxing jurisdictions for 2017.
2. Total state unemployment tax revenues for all taxing jurisdictions divided by total state unemployment taxable payroll for 2017, per the U.S. DOL.

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State of North Carolina

Reference Chart

Rate Calculation	Reserve State	Maximum Tax Rate	5.76%
Wage Base	\$23,500	Penalty Tax Rate	N/A
Rate Issue Date	11/15	Average Weekly Benefit Amount x Average Duration (weeks)	$\$256.53 \times 9.2 = \$2,360$
Joint Accounting	No	Maximum Weekly Benefit Amount x Maximum Duration (weeks)	$\$350 \times 12 = \$4,200$
Voluntary Contributions	Yes (12/15)	Claim Response (Deadline)	10 Days
New Business Rate	1.00%	1 st Level Appeal (Deadline)	15 Days
NBR (Duration)	2 Years	Worksite State	No
Minimum Tax Rate	0.06%		

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State of North Carolina M&A/Reorg Chart

Total/Partial Common Ownership Reorg	Successor rate for the remainder of the year; commingled rate for subsequent years.
Total Non Common Ownership Reorg	Mandatory transfer with successor rate for the remainder of the year; commingled rate for subsequent years.
Partial Non Common Ownership Reorg	Optional transfer with successor rate for the remainder of the year; commingled rate for subsequent years.
Reorg into New Company	Commingled rate of all of the predecessors immediately.

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Phases Of The Strategic Plan for Employee Movement



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Hypothetical Case Study: Buyer And Seller



Southern Foods, Inc. ("Buyer") is a manufacturer:

- › Operates 2 subsidiaries
- › SF Manufacturing, Inc.
- › SF Maintenance, Inc.
- › Employs 20,000 in 10 states (incl. Florida)



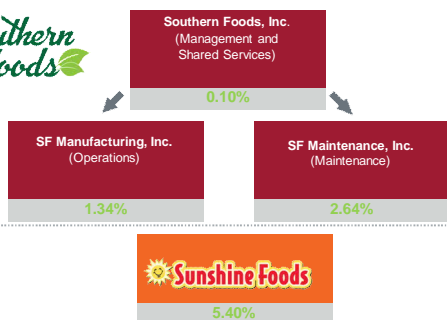
Sunshine Foods, Inc. ("Seller" or "Target") is a competitor in the manufacturing market:

- › No subsidiaries
- › Employs 425 in Florida

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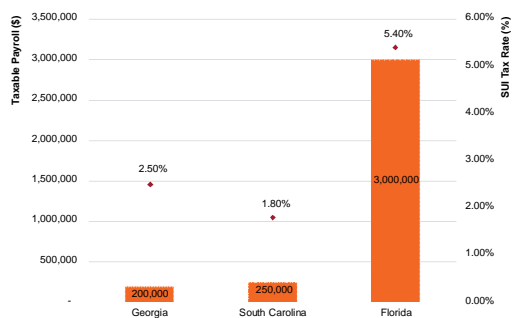
Planning & Design: Current Structure In Florida



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Due Diligence: Sunshine Risk Assessment



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Planning & Design: Factors Impacting TOE*

- › Type of transaction
- › Common Ownership, Management, or Control ("COMC")
- › Partial vs. total transfers of workforce
- › Mandatory vs. optional TOE*
- › Newly liable vs. currently liable employers
- › Rating methodology (e.g., benefit ratio vs. reserve ratio)
- › Specific employee identification method vs. percentage method
- › Timing of transaction
- › Timing of rate revision

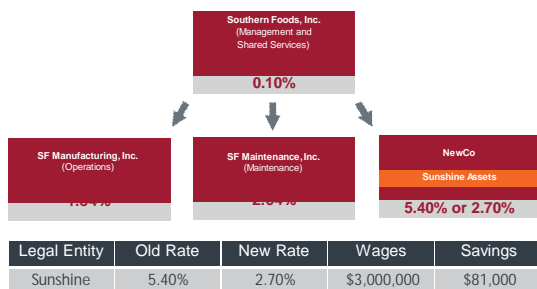
* TOE Transfer of Experience



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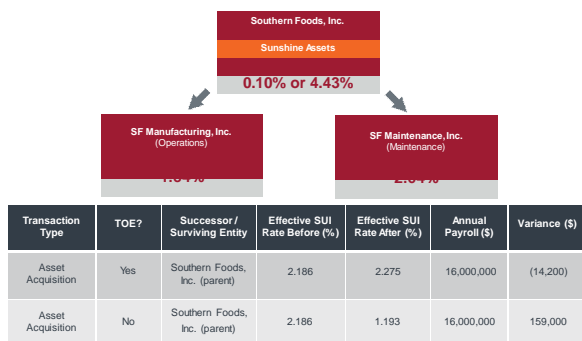
Planning & Design: Stock Acquisition or Merger Into NewCo



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Planning & Design: Asset Acquisition (Single Co)



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Wage Base Carryovers

Transaction Type	TOE?	# of EE's Impacted	Taxable Wages Duplicated from 07/01 to 12/31 (\$)	Tax Rate (%)	Potential Overpayment (\$)
FUTA	7,000	215	1,500,000	0.600	9,000
FICA	118,500	25	787,500	6.200	48,825
SUI	7,000	215	1,500,000	0.100	1,500
Overpayment					59,325

- Typically, wages paid by a predecessor can be used by a successor for purposes of the annual wage limitation.
- Can your payroll/HR system handle?

Implementation And Compliance

- What if Southern and Sunshine didn't properly file compliance documents to execute on the "tax-efficient" strategy?
 - Forego \$173,200 in rate reduction savings
 - Forego \$59,325 in wage base carryover savings
- What if Southern and Sunshine were related by COMC?
 - If required compliance documents were not filed, and Southern's .10% rate was used to pay tax:
 - \$173,200 tax assessment
 - Interest and penalties
 - \$210,000 potential SUTA dumping penalty
 - SUTA dumping is a 3rd degree felony in Florida.



Common ownership, management, or control

Audit

- AUDIT – Claims, Tax Rate, Returns
 - 54 Different Statutory Dates & Deadlines

Audit Analysis & Recovery

- › A company was issued a penalty 2018 tax rate of 10.9010% in Pennsylvania. The penalty was issued due to a state miscalculation. Once all the necessary documentation was presented to the state the protest was upheld and a revised rate was issued.

Estimated Taxable Payroll	Penalty Tax Rate	Revised Tax Rate	Estimated 2018 Savings
\$37,000,000	10.9010%	7.7270%	\$1,174,380

Voluntary Contributions

- › 26 States / Deadlines
- › Size Matters (Variance)
- › Negative to Positive
 - ✦ KY, MA, MO, NJ, NY
- › Multiple Rate Groups / Growth
- › Benefit States May Save Multiple Years

Voluntary Contribution: Anticipated Growth

A company with 30 employees is opening up a new plant in 2018
(increasing to 1,100 employees)

	30 Employees VC 1 Rate Group	1,100 Employees VC 1 Rate Group	1,100 employees VC to MIN Rate
Taxable Payroll	\$390,000	\$14,300,000	\$14,300,000
2017 Tax Rate	3.20%	3.20%	3.20%
Voluntary Contribution	\$1,000	\$1,000	\$12,000
2017 Voluntary Tax Rate	3.07%	3.07%	0.00%
2017 Savings	(\$493)	\$18,590	\$457,600

Joint Accounting

- › 11 STATES – RULES VARY
- › Ohio – Transcripts
- › + BE POSITIVE
- › Your FOOTPRINT Matters
- › NJ- Must Project Rates
- › Common Ownership??
- › Life Sentence

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Joint Accounting Example

NJ based Pharmaceutical Company: By sharing unemployment tax reserves between commonly owned subsidiaries the following actual savings was secured:

Company Name	Estimated Taxable Payroll	Individual Tax Rate	Joint Tax Rate	Reserve Balance	Actual Savings
Company A	\$62,764,560	6.10%	1.20%	(\$3,240,356)	\$3,075,463
Company B	49,023,381	2.60%	1.20%	3,563,365	686,327
Company C	27,465,313	2.30%	1.20%	2,164,587	302,118
Company D	52,806,850	1.60%	1.20%	6,858,509	211,227
Company E	12,357,890	1.60%	1.20%	1,295,358	49,4302
Company F	0	1.60%	1.20%	1,531,686	0
Company G	22,990,173	1.20%	1.20%	6,092,569	0
Company H	28,598,645	1.20%	1.20%	5,325,672	0
Company I	43,490,062	1.20%	1.20%	10,996,033	0
Company J	0	3.70%	1.20%	8,890	0
Joint Account Savings	\$299,496,874		1.20%	\$23,954,804	\$4,324,568

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Large Bread Company Case Study: Planning & Design: Current Structure in AZ

Sample Bread Company ("Buyer") is a national bakery-café concept with Multiple FEIN's

- › Operates under Sample, LLC
- › Employs over 55,000 in 45 states (incl. Arizona)
- › Processes over 90,000 W2's
- › Approx. 950 company-owned location

AquireMe Bakery Café ("Seller") is a competitor fast-casual bakery-café:

- › Operates under AquireMe, Inc.
- › Employs over 2,200 in 5 states (incl. Arizona)
- › Processed over 4,000 W2's
- › Approx. 45 locations

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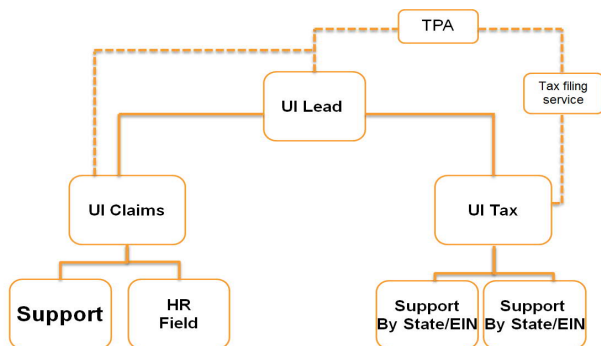
Sample Bread: Learning from Experience

- › Track your rates: ensure Rate Notices are received
 - ✦ Example: GA rate, employer must track down online
- › Put together a schedule: important Details of Each State
 - ✦ Current Rate/New Rate/Date of Rate Change
- › Compare rates / time received to determine payroll tax accruals
- › Note Voluntary Contribution states to ensure timely payment
- › Update payroll tax system and/or vendor timely
- › Update payroll processing system timely
- › Ensure unemployment partner has received all details
- › AUDIT your quarterly tax returns for the proper rates
- › Educate your operations how the process works

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UC Team Members



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Sample Bread Case Study: Internal Reorganization in Arizona



By securing \$1,066,195 in **positive UI tax reserves** and a **lower tax rate** from AquireMe, Sample is expected to save \$346,800 in taxes and another \$88,100 by not restarting the wage bases.

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Sample Case Study: Unemployment Tax Rates Are Impacted By Both Claims And Tax Management

Sample Bread	
Overall unemployment effective tax rate	1.625%
Overall national SUTA tax cost	\$7,220,500
Annual savings from claim wins (1,880 claims)	\$2,169,684
Savings from tax planning (Arizona only)	\$434,900

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Summary: Pre-Acquisition Questions

- › Who are the parties involved?
- › What is the transaction type?
- › When is the transaction taking place?
- › Where is the transaction taking place?
- › What is the most tax-efficient structure?
- › How do I stay compliant?

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Unemployment Tax Reorg Due Diligence Checklist

(External Acquisitions and Internal Reorganizations)

✓ Name and FEIN of successor legal entity(ies)	✓ Legal entity organizational chart
✓ Expected date of contemplated transaction	✓ Forms 940 and 941 for each legal entity for the current and prior two years
✓ Name of predecessor legal entity(ies)	✓ Explanations of any significant reductions in workforce in any legal entities in the current and prior two years
✓ FEIN and SUI account numbers of predecessor(s)	✓ Employment tax transcripts for current and prior two years
✓ Number of employees, by state, by legal entity	✓ Employment tax notices/assessments for current and prior two years
✓ Taxable payroll by state, by legal entity for the current and prior two years	✓ Copy of significant payroll policies and procedures for high exposure issues
✓ State unemployment quarterly contribution and wage reports of predecessor for the current and prior two years	✓ Detail of acquisitions or transferred employees in the current and prior three years
✓ State unemployment tax rate notices of predecessor for current and prior two years	✓ Current state unemployment tax clearance letters from all state workforce agencies

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Questions?

» Thank you for your participation in today's presentation.
