



REGULATORY COMPLIANCE IN CORPORATE RESTRUCTURES



Presenter



Matt Kaufer

Vice President, ETS Sales

Equifax Workforce Solutions

Matthew.kaufer@equifax.com

(314) 684-2456

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

Employment Tax Types

SOCIAL SECURITY INSURANCE (FICA)

Tax Rate:
2018/2019 - 6.2%

Wage Base:
2018 – \$128,400
2019 – \$132,900

Max Tax Cost:
2018 – \$7,961
2019 – \$8,240

FEDERAL UNEMPLOYMENT INSURANCE (FUTA)

Tax Rate:
2018/2019 - 0.6%⁽¹⁾

Wage Base:
2018 – \$7,000
2019 – \$7,000

Max Tax Cost:
2018 – \$42
2019 – \$42

STATE UNEMPLOYMENT INSURANCE (SUI)

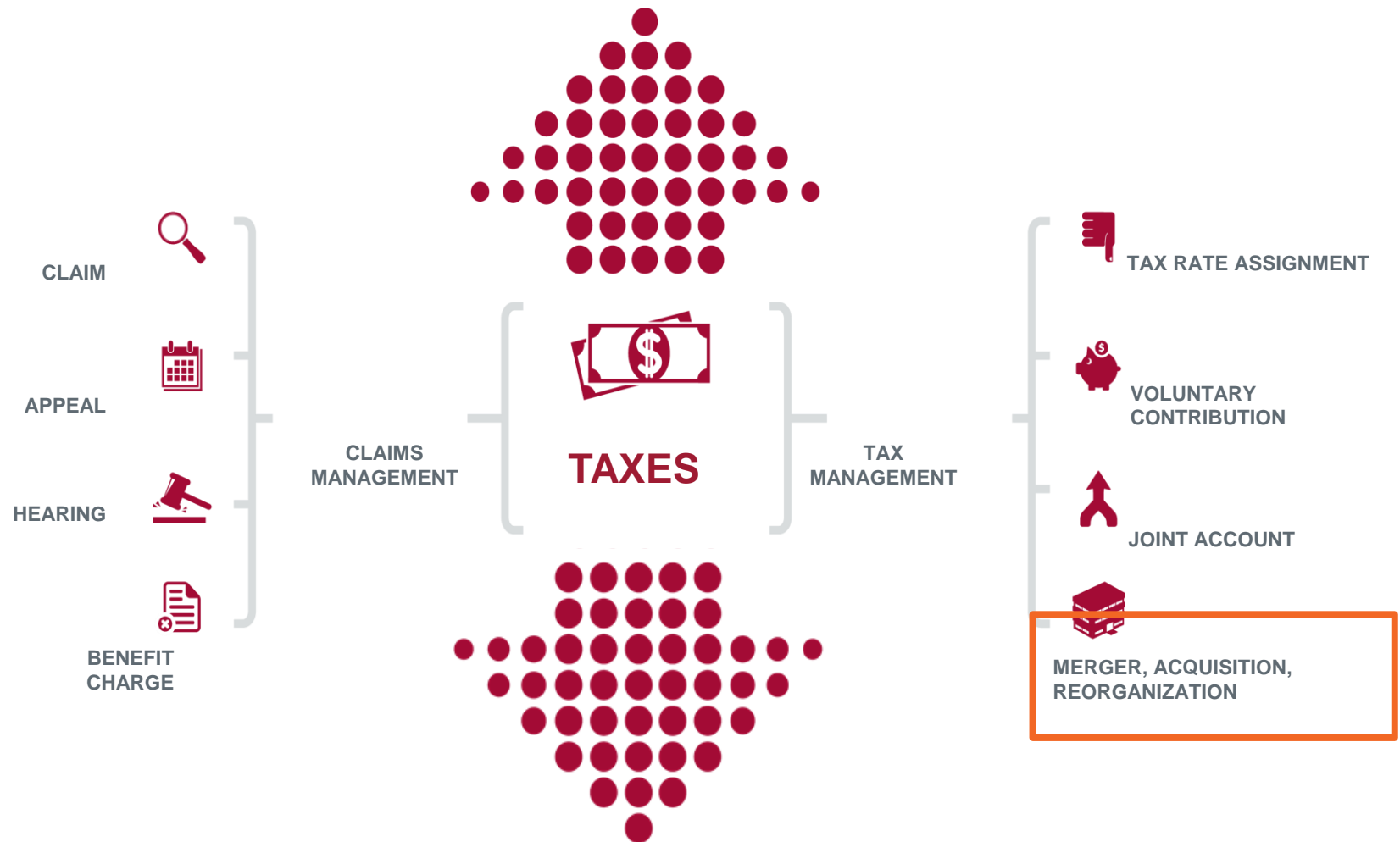
Tax Rate:
2018 – 2.05%⁽²⁾

Wage Base:
2018 – \$18,103⁽³⁾
2019 – \$18,443⁽³⁾

Est. Avg. Tax Cost:
2018 – \$293

1. Rate does not take into consideration the impact of FUTA credit reductions.
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 2018 and estimated simple average for 2019.

Unemployment Tax Rates Are Impacted By Both Claims And Tax Management



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	2.05%	\$18,555,575
10,000	\$18,103	\$181,030,000	2.05%	\$3,711,115
1,000	\$18,103	\$18,103,000	2.05%	\$371,112
500	\$18,103	\$9,051,500	2.05%	\$185,556
100	\$18,103	\$1,810,300	2.05%	\$37,111

1. Simple average of all taxing jurisdictions for 2018.

2. Total state unemployment tax revenues for all taxing jurisdictions divided by total state unemployment taxable payroll for 2018, per the U.S. DOL.

State of North Carolina

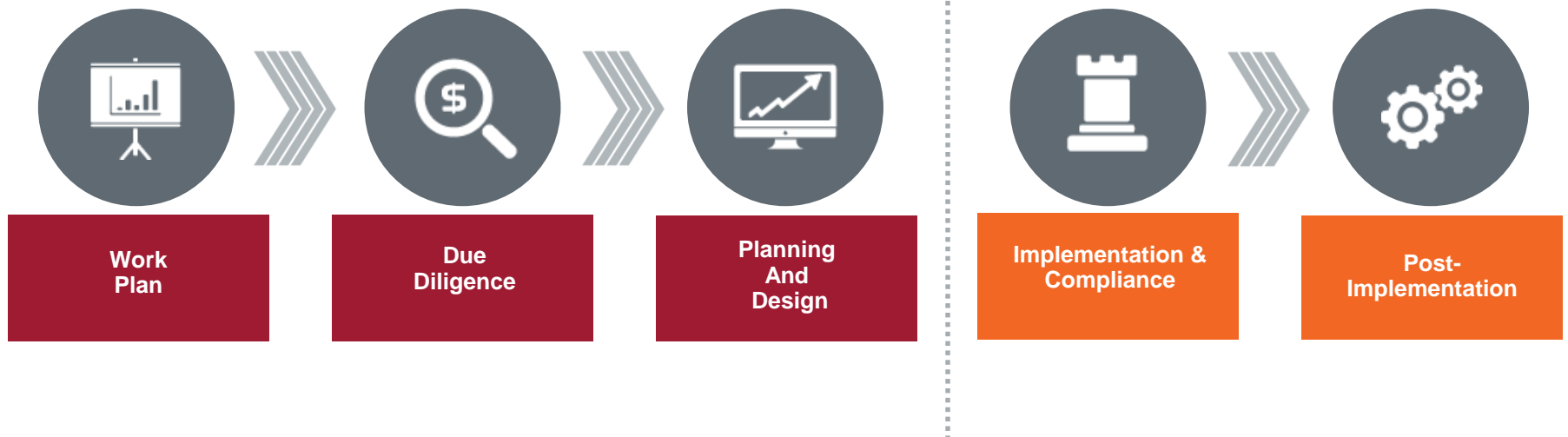
Reference Chart

Rate Calculation	Reserve State	Maximum Tax Rate	5.76%
Wage Base	\$24,300	Penalty Tax Rate	N/A
Rate Issue Date	11/15	Average Weekly Benefit Amount x Average Duration (weeks)	$\$272.07 \times 11.29 = \3071
Joint Accounting	No	Maximum Weekly Benefit Amount x Maximum Duration (weeks)	$\$350 \times 20 = \$7,000$
Voluntary Contributions	Yes (12/15) or 30 days	Claim Response (Deadline)	10 Days
New Business Rate	1.00%	1 st Level Appeal (Deadline)	30 Days
NBR (Duration)	2 Years	Worksite State	No
Minimum Tax Rate	0.60%		

State of North Carolina M&A/Reorg Chart

Total/Partial Common Ownership Reorg	<u>Commingled</u> immediately if on 1 st day of the year, successor for remainder of the year otherwise.
Total Non Common Ownership Reorg	<u>Mandatory</u> transfer, successor rate for remainder of the year, commingled rate thereafter.
Partial Non Common Ownership Reorg	<u>Optional</u> transfer, successor rate for remainder of the year, commingled rate thereafter.
Reorg into New Company	<u>Commingled</u> rate of all of the predecessors immediately.

Phases Of The Strategic Plan for Employee Movement



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

Planning & Design: Current Structure In Florida



Southern Foods, Inc.
(Management and
Shared Services)

0.10%

SF Manufacturing, Inc.
(Operations)

1.34%

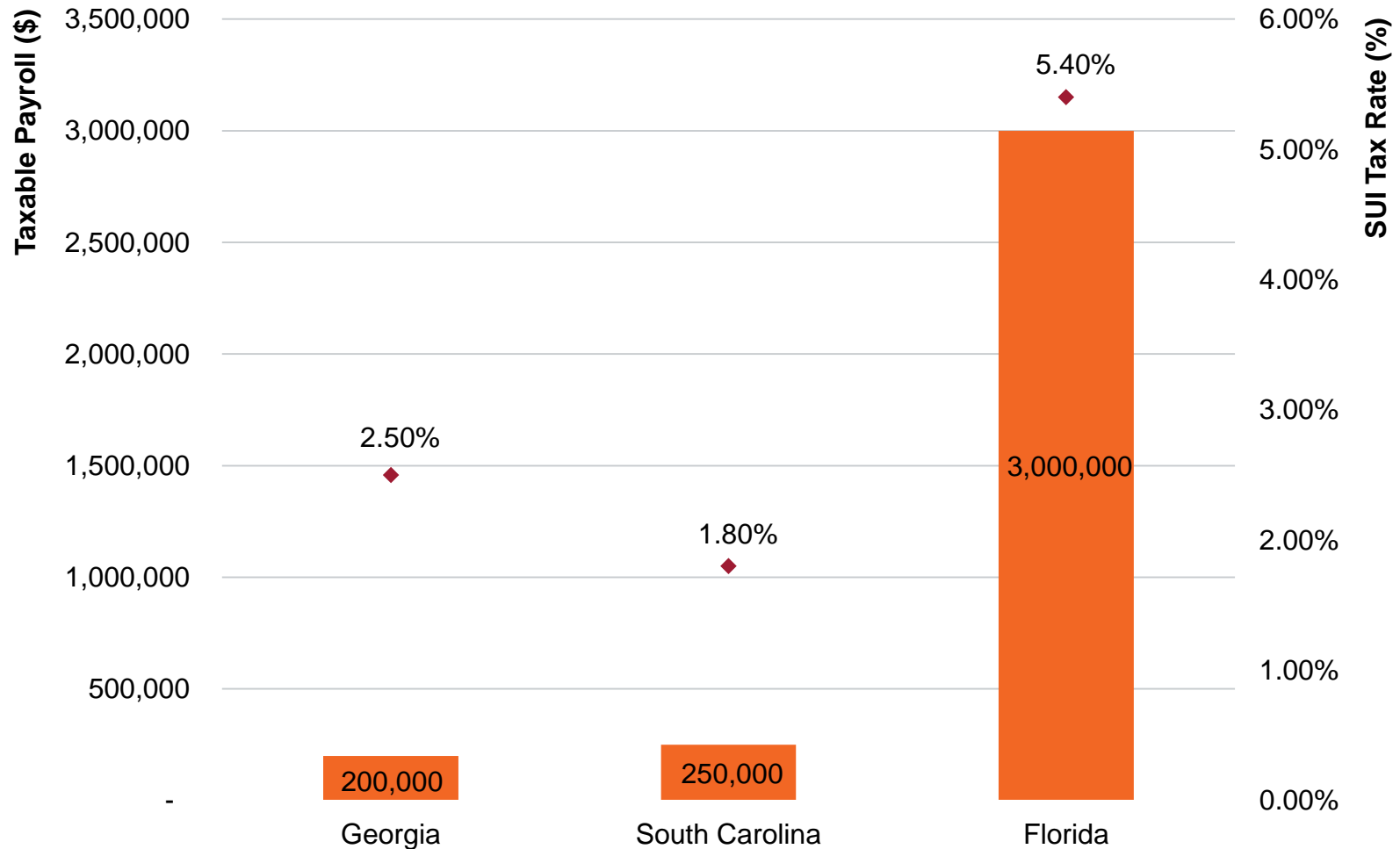
SF Maintenance, Inc.
(Maintenance)

2.64%



5.40%

Due Diligence: Sunshine Risk Assessment



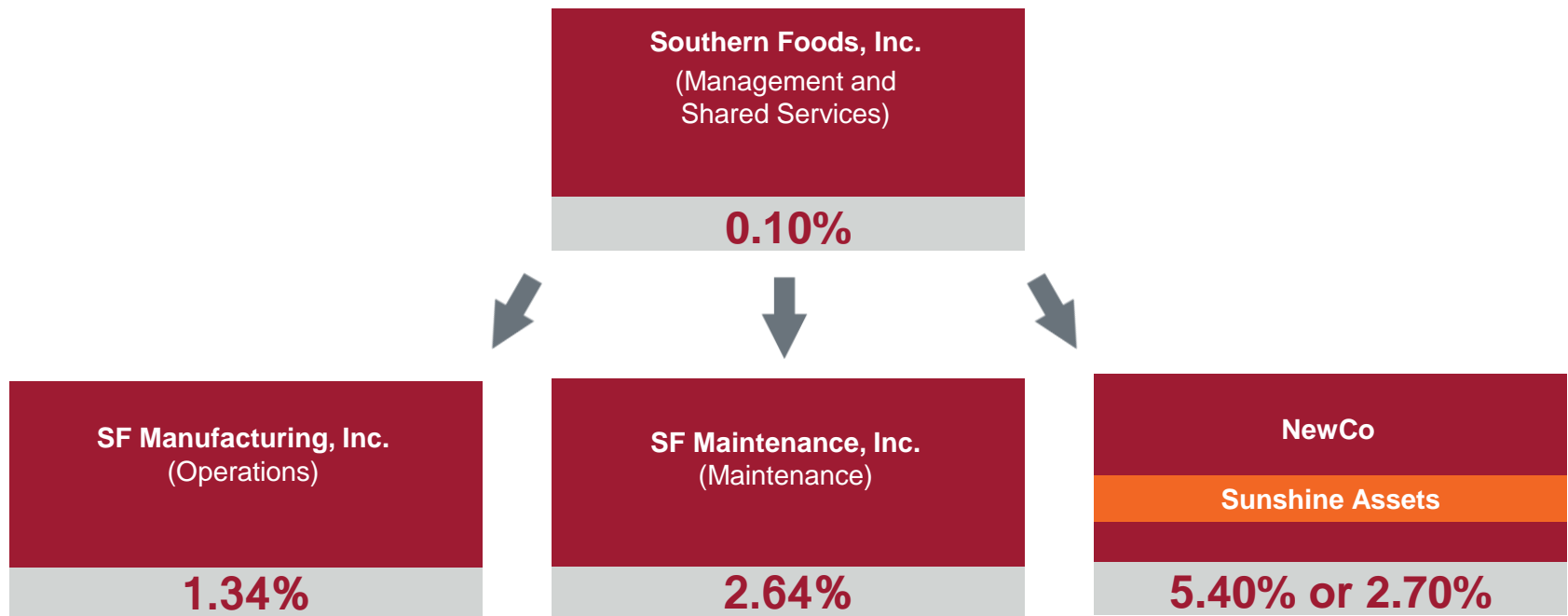
Planning & Design: Factors Impacting TOE*

- › 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

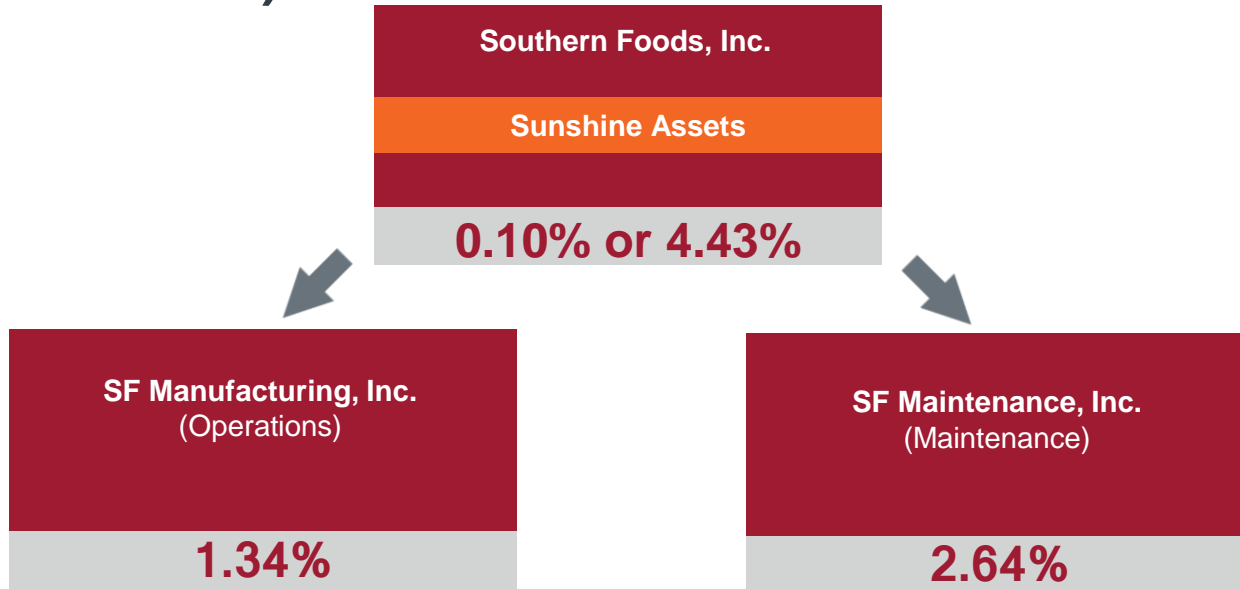


Planning & Design: Stock Acquisition or Merger Into NewCo



Legal Entity	Old Rate	New Rate	Wages	Savings
Sunshine	5.40%	2.70%	\$3,000,000	\$81,000

Planning & Design: Asset Acquisition (Single Co)



Transaction Type	TOE?	Successor / Surviving Entity	Effective SUI Rate Before (%)	Effective SUI Rate After (%)	Annual Payroll (\$)	Variance (\$)
Asset Acquisition	Yes	Southern Foods, Inc. (parent)	2.186	2.275	16,000,000	(14,200)
Asset Acquisition	No	Southern Foods, Inc. (parent)	2.186	1.193	16,000,000	159,000

Wage Base Carryovers

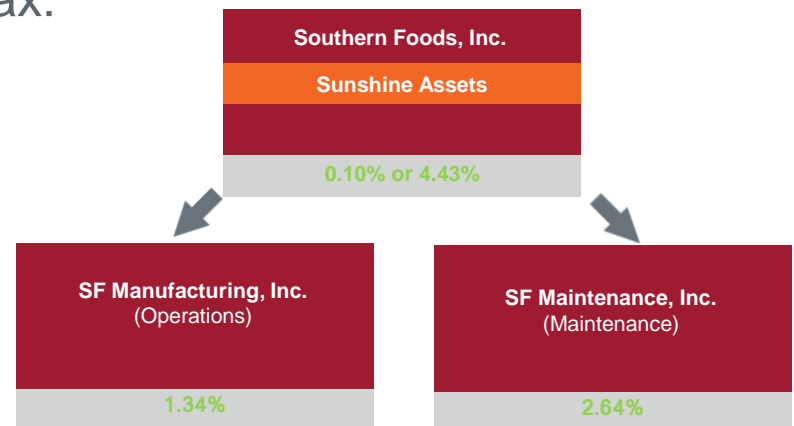
Transaction Type	TOE?	# of EE's Impacted	Taxable Wages Duplicated from 07/01 to 12/31 (\$)	Tax Rate (%)	Potential Overpayment (\$)
FUTA	7,000	215	1,500,000	0.600	9,000
FICA ⁽¹⁾	128,400	25	790,000	6.200	48,980
SUI	7,000	215	1,500,000	0.100	1,500
				Overpayment	59,480

- › 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?

(1) Assumes 25 executives earned \$160,000 per year in 2018

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 \$59,480 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 2019 tax rate of **7.8713%** 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 <u>Payroll</u>	<u>Penalty Tax Rate</u>	<u>Revised Tax Rate</u>	Estimated 2019 <u>Savings</u>
\$61,630,000	7.8713%	4.8713%	\$1,848,900

Voluntary Contributions

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

Voluntary Contribution: Anticipated Growth

A company with 30 employees is opening up a new plant in 2019
(increasing to 1,100 employees)

	30 Employees VC <u>1 Rate</u> Group	1,100 Employees VC <u>1 Rate</u> Group	1,100 employees VC to <u>MIN</u> <u>Rate</u>
Taxable Payroll	\$390,000	\$14,300,000	\$14,300,000
2019 Tax Rate	3.20%	3.20%	3.20%
<i>Voluntary Contribution</i>	\$1,000	\$1,000	\$12,000
2019 Voluntary Tax Rate	3.07%	3.07%	0.00%
2019 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??
- › Lifetime Commitment

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

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

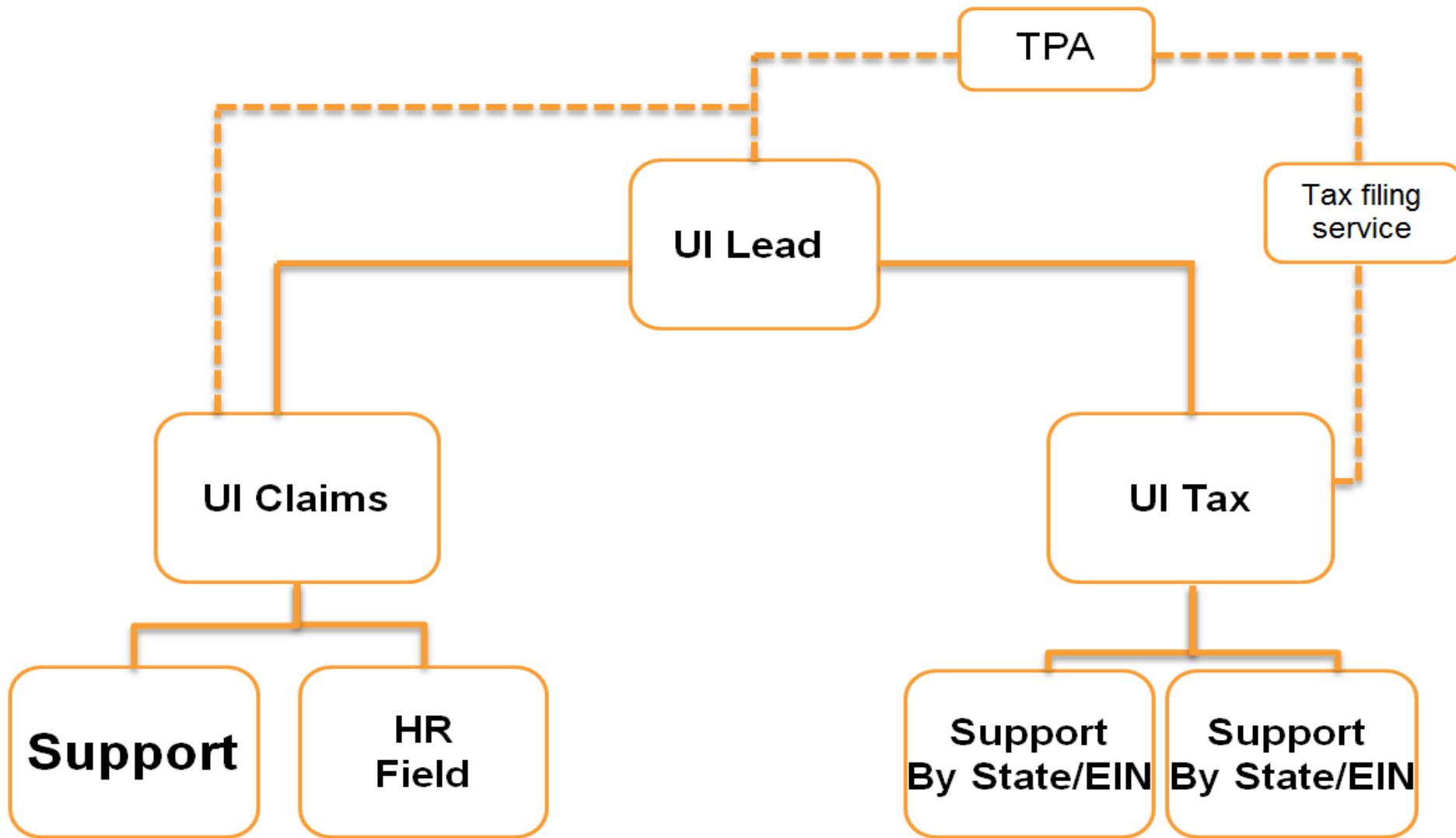
AquireMe Bakery Café (“Seller”) is a competitor fast-casual bakery-café:

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

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

UC Team Members



Sample Bread Case Study: Internal Reorganization in Arizona

BEFORE

AFTER



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.

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

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?

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

Questions?



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