

STATE OF NEVADA
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION
EMPLOYMENT SECURITY DIVISION

PUBLIC WORKSHOP TRANSCRIPTION/MINUTES
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS
FOR THE NEVADA ADMINISTRATIVE CODE 612
(LCB FILES R199-05, R200-05 AND R201-05)

December 14, 2005

Location of Workshop
Grant Sawyer Building
555 East Washington Avenue
Room 4412
Las Vegas, Nevada 89101

Ms. Jones: Good morning. I'd like to call this meeting to order. My name is Cindy Jones and I am the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation. The Employment Security Division is conducting this public meeting and workshop pursuant to Nevada Revised Statutes (NRS) 233B.061 to elicit comments from the general public and all interested parties regarding the adoption of proposed regulations outlined in LCB File Numbers R199-05, R200-05 and R201-05. The proposed regulations amend Nevada Administrative Code (NAC) Chapter 612 due to the enactment of Assembly Bill 502 and Senate Bill 111 during the 2005 Legislative Session, which affected NRS Chapter 612. The proposed regulations also clarify existing regulations and eliminate outdated regulations or references to programs or processes that no longer exist. The topics include regulations describing common ownership, management and control between business entities, regulations on the conditions and types of transfers of employers' experience records, regulations on the denial of transfer of experience record, regulations amending the timeliness for Division tax adjudication and appeals processes and regulations amending the processes related to claims for unemployment compensation. Notice of this meeting was provided in compliance with NRS 241.020 and was mailed to all interested parties listed on the Employment Security Division mailing list. Notice of the meeting was posted at principal offices of the Employment Security Division in Carson City, as well as numerous locations throughout the State, including the Legislative Counsel Bureau, the Nevada State Library and all county libraries. It was also posted on the State of Nevada website for the Department of Employment, Training and Rehabilitation and the website for the Legislative Counsel Bureau. I would now like to turn over the workshop over to Ms. Donna Clark, who is our Chief of Contributions for the Unemployment Insurance Program,

who will provide an overview of the proposed regulation, LCB File Number R200-05, after which I will discuss the other two proposed regulations. After these overviews are presented, the floor will be open to discussion and public comment. Thank you. Ms. Donna Clark will continue from here.

Ms. Clark: Good morning, thank you, Administrator Jones. For the record, my name is Donna Clark and I serve as the Chief of Contributions for the Unemployment Insurance Program in the State of Nevada. During the 2005 Legislative Session, several statutory changes were adopted under Assembly Bill 502, to conform with the Federal SUTA Dumping Prevention Act of 2004, also known as Public Law 108-295. SUTA is an acronym from State Unemployment Tax Act. The statutory changes related to SUTA Dumping were designed to prohibit the manipulation of unemployment insurance tax rates. At the core of the Unemployment Insurance Program is a tax rate system based on experience rating. The intent of an experience rating system is to assign tax rates to employers based on their individual records or experience within the program. Experience rating helps insure an equitable distribution of costs among employers. The practice of SUTA Dumping allows employers to escape their own experience and dump their earned tax obligation on other businesses. This results in an unfair business advantage for companies that engage in the practice and increased tax rates for the businesses that bear the socialized costs attributable to the companies that avoid taxes. This also results in a loss of revenue for the State Unemployment Trust Fund. Before reviewing the regulatory changes related to SUTA Dumping, I would like to provide an overview of the four primary provisions of the SUTA Dumping Prevention Act. The first requirement calls for mandatory rate transfers. Under this provision, whenever there is substantially common ownership, management or control between two employers, and one of these employers transfers its trade or business, including its workforce, to the other employer, unemployment experience must be transferred. This requirement applies to both total and partial transfers of business. Prohibited transfers are defined in the second provision. If the State Unemployment Insurance Agency finds that a person acquired a business solely or primarily for the purpose of obtaining a lower tax rate, the unemployment experience may not be transferred. The third provision requires meaningful civil and criminal penalties for SUTA Dumping. The penalties must be imposed on persons who knowingly violate or attempt to violate SUTA Dumping provisions. These penalties must also be applicable to any person who knowingly gives advice leading to such a violation. The last provision requires states to establish procedures to detect SUTA Dumping activities. I would now like to review the proposed regulatory changes related to SUTA Dumping contained in our handout, which references LCB File Number R200-05. The first eight sections provide a variety of new regulatory definitions.

The first defines a part or portion of an organization, trade or business. It also specifies that the transfer of an employer's workforce is considered a transfer of a trade or business when, to quote, as a result of such transfer, the transferring employer no longer performs the trade or business with respect to the transferred workforce and such trade or business is performed by the employer to whom the workforce is transferred. The next two sections provide regulatory guidelines as to the proper reporting of employees by the legal employing entity. Under Nevada Unemployment Compensation Law, wages must be reported and contributions paid by each employing unit for which services are performed. Reporting practices commonly referred to as Common Paymaster or Payrolling are not allowed under Nevada Unemployment Compensation law. The next five sections provide definitions for substantially common ownership, management or control. Employing entities that share common ownership, management or control may be subject to mandatory rate transfers. The proposed guidelines also detail some of the objective factors that the Agency may use in determining the existence of this condition between two or more businesses. The final three sections beginning on page three of the handout are existing regulations modified to meet the new requirements for experience rating. The modification to NAC 612.014 updates the definition of a severable and distinct portion of a business. Changes to NAC 612.280 provide the conditions for mandatory transfers of experience record between related entities and preserves the conditions for voluntary transfers between unrelated entities. The final modification to NAC 612.290 clarifies the conditions under which experience records will be prohibited. The proposed guidelines also detail some of the objective factors that the Agency may use in determining if an acquisition or change in business organization was effected solely or primarily to obtain a more favorable rate. For the record, I would like to acknowledge an additional change that will be necessary to the final section of NAC 612.290. The draft modification shown on the handout as Subsection 3A1 should be Subsection 4. Also, the draft modification must reflect the provisions of Nevada Revised Statutes 612.250, which provides both a fifteen-day protest period and formal appeal rights to any rate determinations. That concludes my presentation. Would you like to entertain questions at this time, or should we save those for the end?

Ms. Jones: Thank you, Donna. We'll entertain questions on all the regulations at the end of the presentation. I'll now briefly discuss the other two proposed regulation files. The first one I'll discuss is LCB File Number R201-05. This proposed set of regulations is necessary to align the Nevada Revised Statutes and Nevada Administrative Code Chapter 612 with each other as a result of changes to the statutes as a result of the passage of AB502 and SB111 during the 2005 Legislative Session. References to response times to various Agency actions or determinations have been changed from ten

days to eleven days, due to changes in the Nevada Rules of Civil Procedure and these changes were effected in AB502. In SB111, the word “any” has been changed to “all relevant” as relates to facts submitted related to a claimant’s separation from employment, availability for work or other information submitted that would otherwise affect an individual’s eligibility for unemployment insurance benefits. LCB File Number R199-05 makes various housekeeping changes to NAC 612. The new sections propose in the front of the regulation adopt mandatory regulations to be in compliance with NRS Chapter 233B, the Administrative Procedures Act. NAC 612 is amended to provide guides to employers regarding the definition of all relevant facts, which was discussed under the previous file number. The remaining changes throughout this set of regulations are to align the regulations to current practice and amend outdated references. We have been in discussions with the Legislative Counsel Bureau in the last day or so and they may be recommending a technical change whereby the definition of “all relevant facts” would be moved from LCB File 201-05 to the previous one, LCB File 199, I believe it is. They also may have a reordering of the phrasing of the definition of “all relevant facts” to the end of NAC 612.120, so that the definition applies to all the provisions in that section, as opposed to just Subsection 1. That’s the end of my comments regarding these two file numbers and I would be happy to open the floor for discussion of the proposed regulations at this time. Are there any members of the public who would like to provide comment on the proposed regulations? In Carson City, we do not have participation today. The person who we see on the Carson City monitor is a staff member who is there just to facilitate the Internet broadcast of this meeting. However, we will be holding another regulation workshop in Carson City on Thursday. Correct? Yes, all right, Thursday at 10:00 A.M. All right. I don’t see anyone from the public who is here to offer comment, I have checked in with my office in Carson City, Nevada, and we have yet to receive any written comments from any member of the public or interested party. Ms. Richards, have you received any comments in your office regarding these proposed regulations?

Ms. Richards: For the record, Joan Richards, no, I have not received any comments.

Ms. Jones: Thank you. If there is no other business, we’ll call this meeting to a close. Thank you for your participation.