

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

PUBLIC HEARING TRANSCRIPTION/MINUTES
THE ADOPTION OF REGULATIONS
FOR THE NEVADA ADMINISTRATIVE CODE 612
(LCB FILES R199-05, R200-05 AND R201-05)

January 24, 2006

Location of Public Hearing
Legislative Building
401 S. Carson Street
Room 2135
Carson City, Nevada 89701

Ms. Jones: Good morning. I'd like to call this meeting to order. My name is Cindy Jones and I serve as the Administrator of the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division. With me today is Mr. Tom Susich, legal counsel to the Division, Ms. Donna Clark, Chief of Contributions and Ms. Denise Miller, Acting Chief of the Unemployment Insurance Support Services Section. The Employment Security Division of the Department of Employment, Training and Rehabilitation is conducting this public hearing pursuant to Nevada Revised Statutes (NRS) 233B.061, Subsection 3, to elicit comments from the general public and all interested parties regarding the adoption of the proposed regulations set forth in LCB File Numbers R199-05, R200-05 and R201-05. Regulation workshops to solicit comments from interested parties as well as the public was conducted December 14th and 15th as required by NRS 233B.061 and NRS 233B.0608. Notice of this hearing was given as required by NRS 233B.060 and in compliance with NRS 241.020. A copy of the Notice of Intent to Act Upon a Regulation was mailed to all interested parties listed on the Employment Security Division mailing list. Notice of this hearing was posted at the principal offices of the Employment Security Division in Carson City, Nevada, as well as numerous offices throughout the state. In addition, the Notice was submitted to the Legislative Counsel Bureau, the Nevada State Library and all county libraries in the state. The Notice was also posted on the websites of the Department of Employment, Training and Rehabilitation and the Legislative Counsel Bureau. Copies of the proposed regulations are available by the sign-in sheets by the door and may also be obtained on the Department's website at www.nvdetr.org under the Public Notices section. The proposed regulations to amend Nevada Administrative Code (NAC) Chapter 612 are due to the enactment of Assembly Bill 502 and Senate Bill 111 during the 2005 Legislative session, which affected Chapter 612 of the Nevada Revised Statutes, which govern unemployment compensation. Changes in regulatory language are also proposed to clarify existing and eliminate outdated regulations. The

Legislative Counsel Bureau has made changes to the proposed regulation since the public workshops were conducted. However, these changes were in form and format and not substantive in nature and did not change the intent of the regulations. The focus of the proposed regulations include new regulations describing common ownership, management and control between business entities, regulations on the conditions and types of transfers of employers' experience record, regulations on the denial of transfer of experience record, regulations amending the timeliness provisions of the Division's tax adjudication and appeals processes, and regulations amending other processes related to claims filed for unemployment insurance compensation. I would like to now turn over the hearing to Ms. Donna Clark, Chief of Contributions, who will provide an overview of the proposed regulation, LCB File Number R200-05, after which I will discuss the other two proposed regulation files. After these overviews are presented, the floor will be opened to public comment. Thank you.

Ms. Clark: Thank you, Administrator Jones. Good morning. 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 108295. SUTA is an acronym for 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 their taxes. This also results in a loss of revenue for the State Unemployment Trust Fund. I would now like to review the proposed regulatory changes related to SUTA Dumping that were contained in our handout referenced under LCB File Number R200-05. Section two specifies the Division's interpretation of 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, as a result of such transfer, the transferring employer no longer performs the trade or business and such trade or business is performed by the employer to whom the workforce is transferred. The next two sections, three and four, 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 payrollrolling or common paymaster are not allowed. Section five details some of the objective factors that the Agency may use in determining the existence of substantially

common ownership, management or control between businesses. Employing entities that share common ownership, management or control may be subject to mandatory rate transfers. The final three sections beginning on page four of the handout are existing regulations modified to meet the new statutory requirements for experience rating. Section six modifies Nevada Administrative Code 612.014 to update the definition of a severable and distinct portion of a business. Changes to Section 612.280 provide the conditions for mandatory transfers of experience record between related entities and preserve the conditions for voluntary transfers between non-related entities. The final modification to Nevada Administrative Code 612.290 clarifies the conditions under which experience record transfers 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 affected solely or primarily to obtain a more favorable tax rate. This concludes my overview of proposed file 200-05. Thank you.

Ms. Jones: Thank you, Ms. Clark. I will now discuss LCB File Number R201-05. Language changes are being proposed to align Nevada Administrative Code Chapter 612 with the changes affected to Nevada Revised Statute, Chapter 612 through the enactment of Assembly Bill 502 and Senate Bill 111 during the 2005 Legislative Session. References to response times to various Agency actions or determinations have been changed from ten days to eleven days, as a result of changes to the Nevada Rules of Civil Procedure. The phrase “any facts” has been changed to “all relevant facts” as relates to facts submitted in relation to a claimant’s separation from employment, availability for work or other information potentially affecting an individual’s eligibility for unemployment insurance benefits. LCB File Number R199-05 makes various housekeeping changes to Nevada Administrative Code Chapter 612 as well. New sections are proposed to adopt the mandatory regulations prescribed in Nevada Revised Statutes Chapter 233B, the Administrative Procedures Act. The remaining changes are to align regulations with current practice and amend outdated references. The Division did receive one verbal comment regarding this set of regulations to ESD Deputy Administrative Valerie Ryan, concerning Nevada Administrative Code 612.016. A suggestion was made to change the term in this section to “benefit week” rather than week. As while this Chapter of Administrative Code applies to only unemployment insurance benefits, the commenter felt employers might be confused that this definition meant work week. While I appreciate the party’s interest and after careful consideration, I have chosen not to change this term. To do so would be to define a term being benefit week, which is not used otherwise in these regulations. Leaving the defining term as week results in a consistent and harmonious reading of the regulations governing unemployment insurance as “week” is used throughout as it applies to benefit eligibility. Ms. Richards, have we received any other written or oral comments on the proposed regulations?

Ms. Richards: Joan Richards, with Employment Security Division. We have not received any written comments on any of the regulations.

Ms. Jones: Thank you, Ms. Richards. Are there any comments from the public on the proposed regulations here in Carson City? Seeing no members of the public present, I will ask the same question in Las Vegas. Are there any members of the public who would like to provide comment on the proposed regulations in Las Vegas?

Mr. Simonton: There are no public members here in the Las Vegas forum.

Ms. Jones: Okay. For the record, would you identify yourself, please?

Mr. Simonton: My name is Terry Simonton, Supervisor of the Las Vegas Field Audit Office.

Ms. Jones: Okay, thank you, Mr. Simonton. Hearing no public comment, I hereby adopt the proposed regulations contained in LCB File Numbers R199-05, R200-05, and R201-05. For those of you who may be viewing this hearing via the internet, thank you for your participation and interest in the effective and efficient operation of the programs administered by the Employment Security Division of the Department of Employment, Training and Rehabilitation. This meeting is adjourned. Thank you.