

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to:


Stakeholder Liaison
Internal Revenue Service
Minneapolis, MN

from:

Janine Cook
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Tax Exempt & Government Entities
Office of Chief Counsel

subject: FUTA - Calculation of SUTA Credit

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

The issue is the proper calculation of the state unemployment tax (SUTA) credit if the taxable Federal Unemployment Tax Act (FUTA) wages paid by an employer are excluded (“exempt”) from SUTA tax for specific types of employees.

Unemployment insurance is a joint federal-state government program designed to provide cash benefits to employees during temporary periods of unemployment. The FUTA tax owed by an employer for any calendar year is measured by the amount of wages paid by an employer during such year with respect to employment. Section 3301 of the Internal Revenue Code (“Code”). The tax is computed by applying the tax rate in effect at the time that wages are actually or constructively paid. Employment Tax Regulations sections 31.3301-3(b) and 31.3301-4. For calendar years 1988 through 2008, the FUTA rate is 6.2% of the first \$7,000 of taxable wages paid during a calendar year. Sections 3301(1) and 3306(b)(1) of the Code. For 2009 and thereafter, the rate drops to 6.0% of taxable wages. Section 3301(2) of the Code.

In calculating its liability for FUTA tax, an employer generally receives credit for contributions into state unemployment funds (often called “SUTA taxes”) that are timely

paid, up to a maximum of 90% of the FUTA tax otherwise imposed. Section 3302(c). The employer must reduce the credit for SUTA taxes that are paid late. If the SUTA taxes paid do not provide the maximum credit, the employer may also receive an additional credit for the difference between the SUTA taxes that were required to be paid and the SUTA taxes that would have been required to be paid if the employer was subject to the state's maximum SUTA rate, up to the maximum credit allowable. Section 3302(b) of the Code.

If some of the taxable FUTA wages paid by an employer were excluded from SUTA tax (such as remuneration paid to corporate officers), but other wages were subject to SUTA tax, the employer may nonetheless be entitled to the maximum credit based on the SUTA tax paid and any additional credit attributable to wages subject to SUTA tax.

The correct result may be reached by using the Worksheet in the Form 940 Instructions. The timely paid SUTA wages (input on line 2 of the Worksheet) are often more than the FUTA wage base, which results in a credit based on the experience rate (input on line 3 of the Worksheet), and any additional credit (calculated on line 3 of the Worksheet) being more than the maximum credit allowable.

Some employers may believe the SUTA credit is calculated on an employee by employee basis similar to the SUTA and FUTA tax calculations. However, the SUTA credit which is used to offset the FUTA tax liability of the employer is calculated using the aggregate of SUTA wages and credits based on the experience rate plus the additional credit available for SUTA wages.

The Worksheet in the Form 940 Instructions and the Form 940 itself takes all of these nuances into account to calculate the correct amount of FUTA tax.