

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE DRS65589-LY-323 (5/3)

Short Title: SUTA Modifications.

(Public)

Sponsors: Senator Bingham.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RELIEVE A SUCCESSOR EMPLOYER OF THE HIGHER
UNEMPLOYMENT CONTRIBUTION RATE OF ITS PREDECESSOR WHEN
THERE IS NO COMMON OWNERSHIP OF THE TWO EMPLOYERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) reads as rewritten:

"(4) Transfer of account. –

- a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been

1 made prior to the computation date falling within the calendar
2 year within which the effective date of such transfer occurs and
3 the account shall thereafter be used in the computation of the
4 rate of the successor employer for succeeding years, subject,
5 however, to the provisions of paragraph b of this subdivision.
6 Provided there shall be no transfer of account when (i) a person
7 or entity is not an employer at the time of the acquisition and
8 (ii) the person or entity acquired the business or account
9 primarily for the purpose of obtaining a reduced rate of
10 contribution.

11 On or after August 1, 1988, whenever any individual, group
12 of individuals, or employing unit, who or which, in any manner
13 other than provided in this sub-subdivision succeeds to or
14 acquires all of the organization, trade, or business of another
15 employing unit as provided in G.S. 96-8, subdivision (5),
16 paragraph b, the account of the predecessor shall be transferred
17 as of the date of the acquisition of the business to the successor
18 employer for use in the determination of his rate of
19 contributions. Whenever any individual, group of individuals,
20 or employing unit, who or which, acquires all of the
21 organization, trade, or business of another employing unit
22 through a sale in bankruptcy and there is no common ownership
23 or control of the employing units, the account of the
24 predecessor shall, upon the mutual consent of the parties
25 concerned and approval of the Commission in conformity with
26 the regulations as prescribed therefor, be transferred as of the
27 date of acquisition of the business to the successor employer for
28 use in the determination of his rate of contributions provided
29 application for transfer is made within 60 days after the
30 Commission notifies the successor of his right to request such
31 transfer, otherwise the effective date of the transfer shall be the
32 first day of the calendar quarter in which such application is
33 filed, and that after the transfer the successor employing unit
34 continues to operate the transferred portion of such
35 organization, trade, or business. Whenever any individual,
36 group of individuals, or employing unit, who or which, in any
37 manner succeeds to or acquires a distinct and severable portion
38 of the organization, trade, or business of another employing unit
39 as provided in G.S. 96-8, subdivision (5), paragraph b, that part
40 of the account of the predecessor which relates to the acquired
41 portion of the business shall, upon the mutual consent of the
42 parties concerned and approval of the Commission in
43 conformity with the regulations as prescribed therefor, be
44 transferred as of the date of acquisition of the business to the

1 successor employer for use in the determination of his rate of
2 contributions, provided application for transfer is made within
3 60 days after the Commission notifies the successor of his right
4 to request such transfer, otherwise the effective date of the
5 transfer shall be the first day of the calendar quarter in which
6 such application is filed, and that after the transfer the successor
7 employing unit continues to operate the transferred portion of
8 such organization, trade or business. On or after January 1,
9 2006, whenever part of an organization, trade, or business is
10 transferred between entities subject to substantially common
11 ownership, management, or control, the tax account shall be
12 transferred in accordance with regulations. However,
13 employing units transferring entities with any common
14 ownership, management, or control are not entitled to separate
15 and distinct employer status under this Chapter. Provided,
16 however, that the transfer of an account for the purpose of
17 computation of rates shall be deemed to have been made prior
18 to the computation date falling within the calendar year within
19 which the effective date of such transfer occurs and the account
20 shall thereafter be used in the computation of the rate of the
21 successor employer for succeeding years, subject, however, to
22 the provisions of paragraph b of this subdivision. No request for
23 a transfer of the account will be accepted and no transfer of the
24 account will be made if the request for the transfer of the
25 account is not received within ~~two~~three years of the date of
26 acquisition or notification by the Commission of the right to
27 request such transfer, whichever occurs later. However, in no
28 event will a request for a transfer be allowed if an account has
29 been terminated because an employer ceases to be an employer
30 pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the
31 date of notification.

32 a1. A new employing unit shall not be assigned a discrete employer
33 number when there is an acquisition or change in the form or
34 organization of an existing business enterprise, or severable
35 portion thereof, and there is a continuity of control of the
36 business enterprise. That new employing unit shall continue to
37 be the same employer for the purposes of this Chapter as before
38 the acquisition or change in form. As used in this
39 sub-subdivision:

40 1. "Control of the business enterprise" may occur by means
41 of ownership of the organization conducting the business
42 enterprise, ownership of assets necessary to conduct the
43 business enterprise, security arrangements or lease
44 arrangements covering assets necessary to conduct the

1 business enterprise, or a contract when the ownership,
2 stated arrangements, or contract provide for or allow
3 direction of the internal affairs or conduct of the business
4 enterprise.

- 5 2. A "continuity of control" will exist if one or more
6 persons, entities, or other organizations controlling the
7 business enterprise remain in control of the business
8 enterprise after an acquisition or change in form.
9 Evidence of continuity of control shall include, but not
10 be limited to, changes of an individual proprietorship to
11 a corporation, partnership, limited liability company,
12 association, or estate; a partnership to an individual
13 proprietorship, corporation, limited liability company,
14 association, estate, or the addition, deletion, or change of
15 partners; a limited liability company to an individual
16 proprietorship, partnership, corporation, association,
17 estate, or to another limited liability company; a
18 corporation to an individual proprietorship partnership,
19 limited liability company, association, estate, or to
20 another corporation or from any form to another form.

21 This sub-subdivision shall not modify the provisions of
22 G.S. 96-10(d) – Collections of Contributions Upon Transfer or
23 Cessation of Business.

- 24 b. Notwithstanding any other provisions of this section, if the
25 successor employer was an employer subject to this Chapter
26 prior to the date of acquisition of the business, the successor's
27 rate of contribution for the period from that date to the end of
28 the then current contribution year shall be the same as the
29 successor's rate in effect on the date of the acquisition. If the
30 successor was not an employer prior to the date of the
31 acquisition of the business, the successor shall be assigned a
32 standard beginning rate of contribution set forth in
33 G.S. 96-9(b)(1) for the remainder of the year in which the
34 successor acquired the business of the predecessor; however, if
35 the successor makes application for the transfer of the account
36 within 60 days after notification by the Commission of the right
37 to do so and the account is transferred, or meets the
38 requirements for mandatory transfer, the successor shall be
39 assigned for the remainder of the year the rate applicable to the
40 predecessor employer or employers on the date of acquisition of
41 the business, as long as there was only one predecessor or, if
42 more than one, the predecessors had identical rates. In the event
43 the rates of the predecessor were not identical, the rate of the
44 successor shall be the highest rate applicable to any of the

1 predecessor employers on the date of acquisition of the
2 business.

3 Irrespective of any other provisions of this Chapter, when an
4 account is transferred in its entirety by an employer to a
5 successor, the transferring employer shall thereafter pay the
6 standard beginning rate of contributions set forth in
7 G.S. 96-9(b)(1) and shall continue to pay at that rate until the
8 transferring employer qualifies for a reduction, reacquires the
9 account transferred or acquires the experience rating account of
10 another employer, or is subject to an increase in rate under the
11 conditions prescribed in G.S. 96-9(b)(2) and (3).

- 12 c. In those cases where the organization, trade, or business of a
13 deceased person, or insolvent debtor is taken over and operated
14 by an administrator, administratrix, executor, executrix,
15 receiver, or trustee in bankruptcy, such employing units shall
16 automatically succeed to the account and rate of contribution of
17 such deceased person, or insolvent debtor without the necessity
18 of the filing of a formal application for the transfer of such
19 account."
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SECTION 2. This act is effective when it becomes law.