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FUTA SURTAX

Looks like the Federal Unemployment Compensation Act (FUTA) "temporary" surtax of 0.2 percent will expire on Thursday, June 30th. I love these absurdly complicated minor items. As I reported last week, we have had a temporary surtax since 1976, and it has been extended six times, long after the original purpose had been fulfilled. The additional extensions paid for other items, the most recent for extended benefits.

The federal FUTA tax rate is 6.2 percent of taxable wages, comprised of the permanent tax rate of 6 percent and a temporary surtax rate of 0.2. The taxable wage base is the first $7,000 paid in wages to each employee during a calendar year. Employers who pay the state unemployment tax on a timely basis, receive an offset credit of up to 5.4 percent regardless of the rate of tax they pay the state. Therefore, the net FUTA tax rate is generally 0.8 percent (6.2 percent - 5.4 percent), for a maximum FUTA tax of $56.00 per employee, per year (.008 X $7,000. = $56.00). The FUTA tax is paid on an annual basis and the reporting form is Form 940.

So when the surtax expires, the arithmetic will be 6 percent – 5.4 percent = 0.6 percent federal tax rate. Applying this rate to the $7,000 wage base, this works out as .006 X $7,000 = $42 as the amount the employer pays at the end of the year for the year for that employee.

BUT, that is for an employee that has wages only after June 30th. This year will require some transition rules. If the $7,000 was reached before June 30th, the employer is responsible for the full $56. Now, what we presume, but do not know entirely for sure, is that one would do a two part calculation for an employee who has wages before and after June 30th that add up to $7,000. The IRS has indicated it will have instructions and hopefully some safe harbors for employers that have a payroll tax system that might not lend itself to a precise calculation of wages in the "bubble period" before and after June 30th. Since the tax is not paid until the end of the year, it is not the end of world if we do not have an answer right away.

UNION ORGANIZING AND ELECTION PROCEDURES

The National Labor Relations Board (NLRB) has issued a proposed rule to change some of the elements of the organizing and election process. They range from allowing organizers access to email addresses if the employer has them to shortening the time between a petition and the election. The NLRB has set a 60-day comment window and the proposed rule can be found at www.nlrb.gov.

The following is the NLRB's description *(their choice of words*) of the current procedures and the proposed changes. *The proposed change follows each current procedure and is in italics*

*Parties or the Board cannot electronically file or transmit important representation case documents, including election petitions.

Election petitions, election notices, and voter lists could be transmitted electronically. NLRB regional offices could deliver notices and documents electronically rather than by mail, and could directly notify employees by email, when addresses are available.

*The parties receive little compliance assistance.

*Along with a copy of the petition, parties would receive a description of NLRB representation case

procedures, with rights and obligations, as well as a 'statement of position form', which will help parties to identify the issues they may want to raise at the pre-election hearing. The Regional Director may permit parties to complete the form at the hearing with the assistance of the hearing officer.

The Regional Director would set a pre-election hearing to begin seven days after a hearing notice is served (absent special circumstances) and a post-election hearing 14 days after the tally of ballots (or as soon thereafter as practicable.)

*In contrast to federal court rules, the Board's current procedures have no mechanism for quickly identifying what issues are in dispute to avoid wasteful litigation and encourage agreements.

The parties would be required to state their positions no later than the start of the hearing, before any other evidence is accepted. The proposed amendments would ensure that hearings are limited to resolving genuine disputes.

*Encourages pre-election litigation over voter-eligibility issues that need not be resolved in order to determine if an election is necessary and that may not affect the outcome of the election and thus ultimately may not need to be resolved.

The parties could choose not to raise such issues at the pre-election hearing but rather via the challenge procedure during the election. Litigation of eligibility issues raised by the parties involving less than 20 per cent of the bargaining unit would be deferred until after the election.

*A list of voters is not provided until after an election has been directed, making it difficult to identify and resolve eligibility issues at the hearing and before the election.

The non-petitioning party would produce a preliminary voter list, including names, work location, shift, and classification, by the opening of the pre-election hearing.

*The parties may request Board review of the Regional Director's pre-election rulings before the election, and they waive their right to seek review if they do not do so.

The parties would be permitted to seek review of all Regional Director rulings through a single, post-election request.

*Elections routinely are delayed 25-30 days to allow parties to seek Board review of Regional Director rulings even though such requests are rarely filed, even more rarely granted, and almost never result in a stay of the election.

The pre-election request for review would be eliminated, along with the unnecessary delay.

*The Board itself is required to decide most post-election disputes.

The Board would have discretion to deny review of post-election rulings -- the same discretion now exercised concerning pre-election rulings -- permitting career Regional Directors to make prompt and final decision in most cases.

*The final voter list available to all parties contains only names and home addresses, which does not permit all parties to utilize modern technology to communicate with voters.

Phone numbers and email addresses (when available) would be included on the final voter list.

*Deadlines are based on outdated technology, for example, allowing seven days after the direction of election for the employer to prepare and file a paper list of eligible voters

The final voter list would be produced in electronic form when possible, and the deadline would be shortened to two work days.

*Representation case procedures are described in three different parts of the regulations, leading to redundancy and potential confusion.

Representation case procedures are consolidated into a single part of the regulations.

PATENT SYSTEM REFORM

The House has passed their version of patent system reform. Both the Senate and House versions would change the U.S. system from "first to invent" to "first to file." The conference committee will have a little more work ahead of them than originally believed because the House made several late "tweaks" to the bill. The biggest one is over the question of whether the patent office gets to use the fees it collects, as it wishes. The Senate version allows this to happen; the House version does not.

WEEKLY

The Senate is in session this week and the House is off. The House comes back after the Fourth of July and the Senate will be off. I am not sure what activity is going to merit a Weekly, so the plan is there will be no Weekly for two weeks. Next Weekly is July 11th. That's the plan, but as you all know, if there is something to report, I will publish one as needed. Happy Fourth of July!