INDIANA
WORKFORCE
DEVELOPMENT
AND ITS WorkOne CENTERS

TO: Indiana's Workforce Investment System

FROM: Teresa L. Voors
Commissioner, Indiana Department of Workforce Development

THROUGH: Scott Sanders, Chief Financial Officer

DATE: September 26, 2008

SUBJECT: DWD Policy 2008-08
The 50% Penalty for Employer Fraud

Purpose
To define the factors triggering application of the 50% penalty on delinquent unemployment insurance tax contributions found at Indiana Code § 22-4-29-1(c)

Rescission
DWD Policy 2006-04, issued August 3, 2006

Contents
In the interest of ensuring that all employers are paying an appropriate and equitable share of unemployment insurance tax, the Indiana Department of Workforce Development (IDWD) would like to curb fraud and abuse by employers. A 50% penalty for employer fraud exists in law.

Indiana Code § 22-4-29-1(c) states that if the commissioner finds that the failure to pay any part or all of delinquent Indiana Department of Workforce Development contributions is due to fraud with intent to evade the payment of contributions, there shall be added, as a penalty, fifty percent (50%) of the total amount of delinquent contributions, which penalty shall become due and payable upon notice and demand by the commissioner.

Effective immediately, Unemployment Insurance Tax Administration will review employer accounts to determine if application of the 50% penalty is appropriate. After initial review, IDWD staff will refer their determination to the appropriate supervisor for approval.

The review will include, but is not limited to, consideration of the factors outlined below:

- Attempts by an employer to manipulate its tax rate and evade tax liability;
- Purposeful destruction of records by an employer prior to an audit or investigation or failure to keep true and accurate records in accordance with Indiana Code § 22-4-19-6;
- Discovery by IDWD staff, often the result of a claim for unemployment insurance benefits with insufficient wage information, that an employer has not registered with IDWD but is operating with employees. The employer may be paying employees in cash, has no cash receipts and/or failed to issue W-2s and/or 1099s;
- Filing, by the employer, of Unemployment Insurance Quarterly Reports that falsely indicate "Nothing To Report" or consistently reflect understatements of wages paid to employees;
- The employer files a document with IDWD stating it has discontinued operations or is operating without employees and it is discovered to be false information;
- IDWD discovers and confirms that the employer knowingly assists or encourages its employees to claim insurance benefits while working "off the books" for cash or other hidden compensation;
- IDWD finds, in the course of an audit which has become final, that the employer has misclassified wages paid to its employees and IDWD later finds the employer is continuing the same practice; and
- In addition to audits conducted by IDWD, findings in criminal investigations by local and/or federal or state taxing authorities may be used as a factor to establish intent to defraud under IC §22-4-29-1(c).
- Employer's failure to file mandatory quarterly reports.

In addition to the above review described, Unemployment Insurance Field staff will implement the following procedures in the course of an employer audit:

1. If the initial audit reveals that the employer either failed to disclose wages, misclassified employees or failed to register with IDWD as an employer then:
    - At the close of the audit, the auditor shall review the findings and reporting requirements with the employer or the employer's representative;
    - The auditor shall request the employer or the employer's representative to sign a form acknowledging understanding of the reporting requirements; and
    - The auditor will document the conversation in the audit file and follow-up on a semi-annual basis to ensure that the employer is complying with reporting requirements.

2. If IDWD subsequently discovers, via a tip, follow-up or a claim for unemployment insurance benefits, that the employer may be operating in the same manner as the initial audit:

    - The audit supervisor will assign a follow-up audit; and

    - If the auditor finds that the employer's failure to pay any part or all of its contributions due appears to be an attempt to evade the payment of such contributions; then:

        - The auditor will document the findings in the audit file; and

        - Submit the audit findings to the audit supervisor for review with a recommendation that the 50% penalty be applied.

If an employer fails to pay the 50% penalty or continues operations in a manner in violation of Title 22, Article 4 of the Indiana Code, with the intent to evade the payment of contributions, the Unemployment Insurance Tax Administration Unit will seek input and advice from Indiana Department of Workforce Development's Legal Affairs as to further actions to undertake.

Review Date
October 1, 2010

Ownership
Unemployment Insurance Tax Administration
Indiana Department of Workforce Development
10 North Senate Avenue
Indianapolis, Indiana 46204
Telephone: 317.233.3150

Effective Date
Immediately

Action
All staff who work with the unemployment insurance program should have knowledge of this policy. Any questions regarding this communication may be addressed to the Director of Unemployment Insurance Tax Administration at telephone 317.233.3150.