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**TITLE 646 DEPARTMENT OF WORKFORCE
DEVELOPMENT**

Proposed Rule
LSA Document #05-225

DIGEST

Adds 646 IAC 3-4-12 because Senate Enrolled Act 612 voided 646 IAC 3-4-10 and requires the Department to adopt rules explaining how transfers of a portion of a trade or business are affected by this new law enacted to prevent unemployment insurance tax rate manipulation and requires the Department to establish guidelines to divide, when a transfer of a portion of a trade or business occurs, the experience account balance of a predecessor employer, the payroll of a predecessor employer, and the benefits chargeable to a predecessor employer's original experience account after the date of transfer between the predecessor employer and the successor employer. Amends 646 IAC 3-1-7 to reflect changes created by Senate Enrolled Act 612 regarding unemployment insurance tax rate manipulation. *NOTE: LSA Document #05-225, printed at 29 IR 640, was resubmitted for publication.* Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

These changes will not add any additional costs to small businesses.

**646 IAC 3-1-7
646 IAC 3-4-12**

SECTION 1. 646 IAC 3-1-7 IS AMENDED TO READ AS FOLLOWS:

646 IAC 3-1-7 Successor employers; notice; transfer of experience account; liability for contributions

Authority: IC 22-4-18-1

Affected: IC 22-4-7-1; IC 22-4-7-2; IC 22-4-9-1; IC 22-4-10-6; IC 22-4-11-2; IC 22-4-11-3; IC 22-4-11.5; IC 22-4.1

Sec. 7. (a) The ~~director~~ **department** is authorized to determine when there has been an acquisition **or transfer** of the organization, trade, or business of an employer within the meaning of IC 22-4-7-2(a), ~~through~~ IC 22-4-7-2(b), ~~and~~ IC 22-4-10-6, **and IC 22-4-11.5**. Each employer who disposes of all or a part of its organization, trade, or business and the ~~successor~~ **acquirer** to that business, or part of that business, shall ~~immediately within the time prescribed in IC 22-4-10-6(b)~~, report the transaction to the department and execute prescribed forms. **Except as provided by IC 22-4-11.5**, if the ~~director~~ **department** finds that there has been an acquisition **or transfer** under IC 22-4-7-2(a) by an employing unit not previously an employer within the meaning of IC 22-4-7-1 or IC 22-4-7-2, the:

(1) disposing employer's entire experience account shall be transferred to the ~~successor~~ **acquirer**; and ~~the successor~~

(2) **acquirer** shall immediately assume the position of the disposing employer with respect to the resources and liabilities reflected by the experience account as if no change had occurred.

If the ~~director~~ **department** finds that, within the meaning of IC 22-4-7-2(a), there had been an acquisition **or transfer** from an employer by an employer already subject to contribution, the disposing employer's experience account shall be transferred to the ~~successor~~, **acquirer**, but the ~~successor~~ **acquirer** shall retain its rate of contribution **for the remainder of the calendar year, except as provided by IC 22-4-11.5**. Provided, however, should no reports be received by the ~~director~~, **department**, then, at the expiration of thirty (30) days from the date of the acquisition **or transfer**, transfer may be made by the ~~director~~ **department** upon ~~his~~ **its** own ~~motion~~. **initiative**. Whenever a total transfer is made, the status of the ~~original~~ **disposing** employer as an employer under IC 22-4 is terminated unless and until ~~such~~ the employer subsequently qualifies under IC 22-4-7-1 or IC 22-4-7-2.

(b) The acquiring employer, if not previously a ~~subject~~ **an** employer **within the meaning of IC 22-4-7-1 or IC 22-4-7-2**, shall, as of the date of acquisition **or transfer**, become liable for contributions with respect to all wages paid to his **or her** own employees during the entire calendar year. **Except as provided by IC 22-4-11.5**, if the acquiring employer:

(1) becomes liable by reason of the acquisition **or transfer**; and

(2) acquires all or part of the predecessor's ~~disposer's~~ experience account; it **the acquiring employer** shall, beginning with the first day of the calendar quarter in which the acquisition occurs, pay contributions at the rate applicable to the predecessor ~~disposing~~ employer at the time of the acquisition **or transfer** until its rate is computed for the next succeeding calendar year. Provided, however, that if the ~~successor~~ **acquiring** employer simultaneously acquires all or part of the experience balance of two (2) or more employers, its rate, beginning with the first day of the calendar quarter in which the acquisitions **or transfers** occurred, shall be the highest rate applicable to the experience accounts totally acquired **except as provided by IC 22-4-11.5**. Provided further, that if the ~~successor~~ **acquiring** employer had any employment ~~prior to before~~ the date of acquisition upon which contributions were owed under IC 22-4-9-1, its rate of contribution from the first of such year to the first day of the calendar quarter in which the acquisition occurred shall be two and seven-tenths percent (2.7%). If ~~such the~~ employer becomes liable by reason of an acquisition within the meaning of IC 22-4-7-2(b), ~~and does not acquire a part of the it must receive a portion of the disposing employer's experience account of the disposer, its rate shall be two and seven-tenths percent (2.7%) until a higher or lower rate is established under IC 22-4-11-2 and IC 22-4-11-3 in accordance with IC 22-4-11.5~~. If the acquiring employer was an employer at the time of the acquisition **or transfer**, the contribution rate assigned to it for that year shall continue throughout the remainder of the year **except as provided by IC 22-4-11.5**.

(c) Where there is no transfer of an account to a ~~successor~~ **an acquirer** and an employer has legally terminated its liability, then the employer's account shall be ~~terminated~~ **inactivated** and closed. Provided, however, that if that employer again becomes subject to the law within four (4) years of the date of ~~termination~~ **inactivation** of its account, then it shall:

(1) resume its former position with respect to the resources and liabilities of the experience account; and ~~shall~~

(2) be entitled to an experience rate computation under IC 22-4-11-2 and IC 22-4-11-3 if benefits have been payable from and chargeable to its experience account throughout the thirty-six (36) months immediately preceding the computation date.

~~(d) Domestic employment, as defined in IC 22-4-7-2(i) will not be considered in the transfer of an experience account under IC 22-4-7-2(a) or IC 22-4-7-2(b). The disposer will retain the domestic portion of its experience account and will be assigned a new reporting number. (Department of Workforce Development; Rule 11; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 871; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 32; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 37; filed Jun 15, 1955, 9:00 a.m.: Rules and Regs. 1956, p. 211; filed Sep 12, 1956, 12:30 p.m.: Rules and Regs. 1957, p. 110; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 74; filed Aug 19, 1971, 3:30 p.m.: Rules and Regs. 1972, p. 31; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 155; filed Nov 25, 1975, 3:05 p.m.: Rules and Regs. 1976, p. 103; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 60; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1910; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2596; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-7) to the Department of Workforce Development (646 IAC 3-1-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.~~

SECTION 2. 646 IAC 3-4-12 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-4-12 Transfer of all or part of business; division of experience balance

Authority: IC 22-4-18-1

Affected: IC 22-4-7-2; IC 22-4-10-6; IC 22-4-11.5; IC 22-4-32; IC 22-4.1

Sec. 10. (a) Each employer who disposes of or transfers all or part of his or her organization, trade, or business under any one (1) or combination of:

(1) IC 22-4-7-2(a);

(2) IC 22-4-7-2(b); or

(3) IC 22-4-11.5;

shall immediately notify the department in writing.

(b) The disposing employer and the acquiring employer shall thereafter promptly submit to the department, in writing, information requested by the department, including the completion and filing of prescribed forms, where necessary, as the department may request relating to the disposition and acquisition.

(c) Based upon information obtained under subsection (b) and any other relevant information in the department's records, the department shall do the following:

(1) Determine whether the disposition, acquisition, or transfer comes within the meaning of any one (1) or combination of the following:

(A) IC 22-4-7-2(a).

(B) IC 22-4-7-2(b).

(C) IC 22-4-11.5.

(2) Notify the disposing employer and the acquiring employer of its determination.

(d) In each case where the department determines there has been an acquisition under IC 22-4-7-2(a), the acquiring employer shall assume the position of the disposing employer with respect to all the resources and liabilities of the disposer's experience account except as provided under 646 IAC 3-1-7.

(e) In each case where the department determines there has been an acquisition under IC 22-4-7-2(b), the acquiring employer shall assume a portion of the experience account of the disposer. The acquiring employer and disposing employer shall submit to the department notification of the acquisition on prescribed forms for the partial transfer properly containing all requested information within the time period specified in IC 22-4-10-6(b). The department shall notify the acquiring employer and the disposing employer of its determination.

(f) In each case where the department determines that there has been a transfer under IC 22-4-11.5, the department shall do the following:

(1) Evaluate whether there has been a violation under IC 22-4-11.5.

(2) Notify the acquiring employer and the disposing employer of its determination.

(g) When the notification of acquisition, disposition, or transfer is received or upon the department's own initiative, the experience balance and other factors shall be divided in the following manner:

(1) The department shall determine ratios (hereinafter called the "transfer percentages"). These transfer percentages shall be obtained by determining the ratios that the wages paid in connection with the portion of the business retained and the wages paid in connection with the portion of the business disposed of or transferred are to the total wages paid by the disposer during either of the following periods:

(A) The three (3) full fiscal years ending on June 30 immediately preceding the disposition date and the period from the end of these three (3) periods to the date of disposition.

(B) Such lesser period as the disposer has been an employer.

(2) In all cases of a partial transfer, the disposer will be reassigned a new experience account. If the acquiring employer was not an employer before the acquisition or transfer, it shall be assigned an experience account based on the portion of the experience account transferred from the disposing employer; however, if the acquirer was an employer immediately before the acquisition date, it will retain its original experience account, in addition to the portion of the disposing employer's experience account that the acquiring employer is required to take from the disposing employer, in accordance with IC 22-4-7-2(b) or IC 22-4-11.5, or both.

(3) The transfer percentages shall then be applied to the following:

(A) The wages paid by the disposing employer in either of the following:

(i) Each of the last three (3) twelve (12) month periods ending June 30 before the date of the disposition or transfer.

(ii) Such lesser period as the disposer has been an employer.

(B) The wages paid by the disposing employer after the:

(i) end of three (3) twelve (12) month periods; and

(ii) before the date of disposition or transfer.

(C) The credit or deficit balance in the disposing employer's experience account as of the disposition date.

(4) Wages paid and the disposing employer's experience balance shall be:

(A) transferred from the original experience account of the disposing employer; and

(B) allocated to the separate experience accounts of the:

(i) disposing employer; and

(ii) acquiring employer;

in accordance with the respective transfer percentage of each.

(5) All benefits chargeable to the disposer's original experience account subsequent to the disposition date shall be charged to the disposer's reassigned experience account and the acquirer's experience account in accordance with the transfer percentages. Except as provided by IC 22-4-11.5, annual rates of contribution for the disposing employer and the acquiring employer shall be based on the adjusted employment experience of each employer as of the regular computation date for subsequent years.

(6) Any written determination made by the department shall become conclusive and binding upon both the disposing and acquiring employer unless within fifteen (15) days, commencing with the day following the day upon which the initial

determination is mailed to the employing unit, one (1) or both of the employers file a protest in writing to the determination, setting forth the grounds and reasons. The protest of the employer shall be heard and determined under IC 22-4-32-1 through IC 22-4-32-15. In any case, both the disposing employer and the acquiring employer shall be:

(A) made parties to the hearing before the liability administrative law judge; and

(B) entitled to receive copies of all pleadings and the decision.

(Department of Workforce Development; 646 IAC 3-4-12)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on January 6, 2006 at 8:30 a.m., at the Department of Workforce Development, 10 North Senate Avenue, Room 301A, Indianapolis, Indiana the Department of Workforce Development will hold a public hearing on proposed amendments to 646 IAC 3-1-7 and new rule 646 IAC 3-4-12, which are related to transfers of a portion of a trade or business for purposes of unemployment insurance and pursuant to Senate Enrolled Act 612.

These changes will not add any additional costs to small businesses. These proposed rules do not impose any requirements or costs on a regulated entity not expressly required by state or federal law.

Copies of these rules are now on file at 10 North Senate Avenue, Room SE202 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Ron Stiver
Commissioner
Department of Workforce Development