FUBA issues

Legislative News Affecting Florida Employers

MARCH 2004 Volume XIV, No. 3

ATTENTION CORPORATIONS AND LIMITED LIABILITY COMPANIES: DON'T FORGET TO FILE YOUR ANNUAL REPORT

Florida law requires every corporation and limited liability company ("LLC") to file an annual report with the state in the calendar year following its year of creation. The annual report will list all the current information the state has on file about your company, such as place of business, mailing address, registered agent, and all officers and directors. If you need to change any of this information, you should do so on this form. If, for example, you need to add an officer, you can list that officer on your annual report and his or her name will be added to the corporate database. You can also use this form to delete officers from your corporation. Normally, changing information like this can only be done by filing an amendment to your articles of incorporation, which costs $35.

Please note: if you are in the construction industry, in order for your corporate officers to be eligible for an exemption from workers' compensation, those officers must be listed as such on the state's corporate database. If you need to add an officer to your corporate listing in order for him or her to apply for an exemption, the easiest way to do that is by listing the new officer on your annual report.

You can file your annual report any time between January 1st and May 1st of this year. There is a fee required with the report: corporations pay $150 and LLC's pay $50 each year. The Department of State has mailed over 1 million post cards reminding every active corporation and LLC that they must file their annual report by May 1st to maintain their active status. You have 3 choices on how to file your annual report:

- File on-line with a credit card at www.sunbiz.org.
- Download your pre-printed annual report from the Department of State's website (www.sunbiz.org), fill it out by hand and mail it to the state with a check for the fee
- Send back the tear-off part of the post card you received from the Department of State requesting that they mail your annual report to them. These postcards were mailed January 1st.

Do not wait to file your annual report! If you have not filed by May 1st, you will have to pay a **$400 late fee**. The Department of State will then send you a second notice in June and will dissolve your corporation or LLC in September if you still have not paid the annual fee plus all late fees. If your corporation or LLC is dissolved, you will have to pay $600 to have it reinstated, plus all annual fees that you owe.

For new corporations or LLC's formed in calendar year 2003: you must file your first annual report this year. Even if you were incorporated or formed your LLC on December 31, 2003, you still must file an annual report this year.

For new corporations or LLC's formed in calendar year 2004: you will not file an annual report this year. Your first annual report will be due in 2005. If you formed a corporation or LLC in order to qualify for a workers' compensation exemption, please be aware that you must keep your corporation/LLC active in order to maintain your exemption in good status. If you do not pay your annual report and the state dissolves your company, you will no longer qualify for your exemption.

If you have any questions about your annual report, you can call the Department of State at 850-245-6056 (corporations) or 850-245-6051 (LLC's).

UNEMPLOYMENT TAX FOR LIMITED LIABILITY COMPANIES

Effective January 1st, 2004, a new Florida law requires that Limited Liability Companies ("LLC's") be added to the definition of "employing unit." This law also provides that an LLC is to be treated for unemployment tax purposes as having the same status as its classification for federal income tax purposes.

Since the Internal Revenue Service does not recognize an LLC as a tax classification, LLC's must choose to be taxed by the IRS as (1) a sole proprietor (for single member LLC's only), (2) a partnership, or (3) a corporation. When you form an LLC, you have to tell the IRS which of the above 3 ways you want to pay tax.

Currently, partners and sole proprietors do not have to pay unemployment tax on themselves, while corporate officers who provide services to the corporation do have to pay unemployment tax on themselves.

This new law clarifies that if an LLC has elected to be classified as a corporation for federal income tax purposes, it must pay unemployment tax on its owners (also called "members") who perform services for the company. Beginning with the first quarter of 2004, owners performing services for the LLC are considered to be employees, and unemployment tax is due on their wages.

However, if the LLC has elected to be classified as a sole proprietor or a partnership, the LLC does not have to pay unemployment tax on its owners who work for the company.

The bottom line is if you have an LLC, you should first consult with your local accountant or tax professional and tell the IRS that you want to pay federal income tax as either a sole proprietor, partnership, or corporation. If you choose corporation, you will have to pay unemployment tax to the state for all owners of the company who actually work and receive compensation from the LLC. If you are required to pay this tax, it will be due in April of this year, and you will have to file a UCT-6.

If you have any questions about how or whether this new requirement applies to your business, please call the FUBA offices at 850-681-6265 and ask for Karen or Lance.

DO YOU OFFER COUPONS, DISCOUNTS OR OTHER PROMOTIONAL GIFTS?

Many businesses offer coupons, rebates, gifts and "buy one get one free" offers to attract customers. Did you know these discounts and promotions must be considered when determining the "sales price" of an item when you calculate the sales tax due? Florida law provides that discounts given by sellers at the time of sale are excluded from the definition of "sales price."

Generally, the discount is deducted from the sales price **before** computing the amount of sales tax. But some circumstances call for different treatment, such as when the seller is reimbursed by the manufacturer. The tax treatment of "free" items also depends on the situation, such as whether the customer must purchase an item in order to obtain the free one.

The Florida Department of Revenue has issued a Tax Information Publication on this subject to help businesses correctly calculate tax on sales that involve coupons, discounts, rebates, free merchandise, etc. This article explains how to treat coupons, and next month's newsletter will explain rebates and gifts. If your business offers these kinds of promotions, you should read the entire bulletin. Please call the FUBA offices, and we can fax or mail it to you.

Coupons: The sales tax treatment of these purchases depends on whether the retailer can be reimbursed by the manufacturer or another party for the coupon. Manufacturers' coupons – When a retailer accepts a manufacturer's coupon, the retailer does not recognize any loss in the profit made on the sale. The manufacturer or another third party reimburses the retailer for the face value of the coupon. The sales price on which tax is based is the total selling price **before** deducting the coupon. Retailers' coupons – When a retailer issues a store coupon, the retailer is reducing the sales price of the item. The retailer reduces its profit on the sale and does not recover the value of the coupon from another party. The sales price on which tax is based is the total selling price **after** deducting the coupon. Any additional value assigned by the retailer, such as to double or triple the coupon, is also deducted from the sales price.