

D17-02
Fiscal Agent Joint and Several Liability

Date: January 19, 2017
Proposed by: DWD
Prepared by: Kristin Shimabuku

ANALYSIS OF PROPOSED UI LAW CHANGE
Fiscal Agent Joint and Several Liability

1. Description of Proposed Change

Individuals who receive long-term support services in their home through government-funded care programs are domestic employers under Wisconsin's unemployment insurance law.¹ These employers receive financial services from fiscal agents, who directly receive and disperse government program funds. The fiscal agent is responsible for reporting employees who provide services for the domestic employers to the Department, and for paying unemployment tax liability on behalf of the employer.² Currently, approximately 16,000 of the 19,000 domestic employers in Wisconsin receive government-funded care and use a fiscal agent. These employers incur tax liability when fiscal agents fail to file quarterly reports or fail to make tax liability payments.³ It is difficult to collect delinquent tax from domestic employers who use fiscal agents because these employers are typically collection-proof.

Currently, Wisconsin's unemployment insurance law does not provide statutory authority to collect delinquent tax liability from the fiscal agent. Federal law provides that all provisions of law, including penalties, applicable to the employer are also applicable to the fiscal agent.⁴ Under federal law, fiscal agents are jointly and severally liable for the unemployment tax liability of the employer. The Department proposes that Wisconsin adopt an equivalent statutory

¹ Wis. Stat. § 108.02(15)(km).

² Wis. Stat. § 46.27(5)(i).

³ As of July 2016, the receivables for domestic employers is \$44,709.02.

⁴ 26 U.S.C. § 3504; 26 C.F.R. § 3504-1(b)(1).

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provision applicable to private agencies that serve as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent.⁵

2. Proposed Statutory Changes

Section 108.22 (10) of the statutes is created to read:

(10) A private agency that serves as a fiscal agent under s. 46.2785, or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27(5)(i), 46.272(7)(e), or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c) may be found jointly and severally liable for the amounts owed by the person under this chapter, if, at the time the person's quarterly report is due under this chapter, the private agency served as a fiscal agent for the person. The liability of such agency as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the employer and shall be set forth in a determination or decision issued under s. 108.10.

3. Effects of Proposed Change

- a. Policy. The proposed change will provide the Department with an alternative for collecting unemployment tax liability owed by domestic employers receiving long-term support services in their home. The law change will encourage fiscal agents to comply with their responsibilities under Wisconsin's Unemployment Insurance Law. This will align Wisconsin's unemployment insurance law with the federal unemployment insurance law.
- b. Administrative. This proposal will require training of tax staff.
- c. Fiscal. A fiscal estimate is attached.

⁵ This proposal excludes joint and several liability for county departments and aging units.

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4. State and Federal Issues

There are no known federal conformity issues with this proposal. This proposal will align Wisconsin law with federal law. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

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Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This law change proposal would have a negligible but positive impact on the UI Trust Fund. It would also incentivize proper reporting to the UI Division.

IT and Administrative Impact:

This law change proposal will require approximately 390 hours of IT changes at a one-time cost of \$33,930. The administrative cost is estimated at approximately 30% the IT cost or \$10,179. The total one-time cost is estimated at \$44,109.

Summary of the Proposal:

Currently, fiscal agents are representatives for UI purposes acting on behalf of employers, especially employers who are individuals who are unable to manage their own affairs. Fiscal agents are responsible for, among other things, filing unemployment insurance tax and wage reports on behalf of the employer and ensuring that tax payments are made to the Division. If fiscal agents do not correctly report to the Division, the Division is often unsuccessful in obtaining the correct information from the employer because the employer is a disabled or incapacitated individual. The Division proposes a law change to mirror federal law, which would result in fiscal agents being jointly liable for the unemployment tax of the employers that the agents represent.

Trust Fund Methodology:

The delinquent tax receivables for domestic employers using a fiscal agent are approximately \$45,000 going back to 2009. If collections could pursue collections activity again a fiscal agent, this would result in approximately \$6,500 additional debts per year that we can pursue recovery. Since we have never collected from a fiscal agent before, it is hard to approximate what the collection rate would be. At a 90% collection rate, this would result in a UI Trust Fund savings of approximately \$5,850 annually. This would be a negligible but positive impact on the UI Trust Fund.

This law change proposal would also incentivize proper reporting.

IT and Administrative Impact Methodology:

The IT hours and cost assumes is based on high level business requirements. It assumes 300 SUITES hours and 90 CEDARS hours to make the necessary changes. The administrative cost is 30% of the IT cost based on prior project estimates.