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EMPLOYMENT SECURITY DEPARTMENT

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STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS

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of

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UNEMPLOYMENT INSURANCE TAXES RULES MEETING

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Date and Location

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August 17, 2010

Employment Security Department

Tuesday, 9:00 a.m.

Maple Leaf Conference Room

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212 Maple Park Drive

Olympia, Washington

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16           BE IT REMEMBERED, that an Unemployment Insurance  
17           Taxes rules public meeting was held on the date, time and  
18           location as set forth above. The Employment Security  
19           Department was represented by ART WANG, Special Assistant  
20           for UI Tax.

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Reported by:

22

H. Milton Vance, CCR, CSR  
(License #2219)

23

EXCEL COURT REPORTING

24

16022-17th Avenue Court East  
Tacoma, WA 98445-3310

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I N D E X

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August 17, 2010 - Olympia

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welcome & Introductions

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Purpose of Meeting

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Discussion on Rules

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Conclusion

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1 PROCEEDINGS

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3 welcome & Introductions

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5 MR. WANG: Okay, this is a meeting to discuss  
6 unemployment insurance tax and wage rules. Today is  
7 August 17, 2010, and my name is Art Wang, W-A-N-G, and I  
8 am special assistant for unemployment insurance taxes at  
9 the Employment Security Department.

10 what we'll do is first of all just to do  
11 introductions and then go through kind of the purpose of  
12 the meeting, and then walk through the rules themselves  
13 and invite any comments and things you may have. And  
14 frankly we'd like this to be pretty informal and just --  
15 so chime in and say anything you want at any time. It's a  
16 very informal process hearing even though we do have a  
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17 court reporter.

18 And let me introduce the court reporter, Milton

19 Vance.

20 And then let -- maybe you could go around the room

21 and we'll do introductions. And we'll start with Larry,

22 if you could give your name, spell your last name.

23 MR. SHEAHAN: My Rank and my serial number?

24 MR. WANG: And serial number and spell your last

25 name.

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1 MR. SHEAHAN: Okay. I'm Larry Sheahan,

2 S-H-E-A-H-A-N. Legislative and legal process manager is  
3 my title here at ESD. And I think that's it.

4 MS. MYERS: My name's Juanita Myers, M-Y-E-R-S, and I  
5 am the Rules Coordinator for the Unemployment Insurance  
6 Division.

7 MS. PARKER: Alisa Parker. I'm the Human Resources  
8 manager at State Farm Insurance.

9 MR. DILLEY: Scott Dilley with Washington Farm  
10 Bureau. Public policy analyst there.

11 MR. WANG: And we also have a phone line open but  
12 nobody on it at this point.

13

14 Purpose of Meeting

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16 MR. WANG: The purpose of the meeting is to go

17 through and consider a couple areas of unemployment  
Page 7

18 insurance tax rules. One is specifically to implement  
19 section 1 of Senate Bill -- Substitute Senate Bill 6524  
20 which deals with the delinquent insurance -- delinquent  
21 tax rate for unemployment insurance taxes starting with  
22 the year 2011. And the other is more of a general mixture  
23 of a variety of subjects. It's kind of an accumulation of  
24 things, most of which are technical amendments, but there  
25 are some substantive things in here, and to kind of walk

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□

1 through and just do a comprehensive overview of basically  
2 updates on the tax rules for unemployment insurance.



19 6524.

20           Basically what I did here was simply to divide up the  
21 -- break up the current rule which is WAC 192-320-035 and  
22 just make that for rate years through 2010. So that  
23 part's easy.

24           Then to parallel that structure with a new rule 036,  
25 and that starts on the third page in here. And I'll just

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1 go through and mention a couple things that are -- I  
2 forgot to number the pages on this, but if you go to  
3 subsection (5) of the new part, what I did was to do this

4 in -- not in code reviser format but to show the changes  
5 that occur from the current rule.

6 what this is about is when a taxpayer -- a business  
7 is no longer a qualified employer because it has been late  
8 in payments, it doesn't pay on the due dates -- and this  
9 is according to the statute -- we modified the penalty --  
10 or the legislature modified the penalty so it is  
11 significantly less in most cases. But there will be  
12 instances where it is more.

13 The new standard instead of being basically not at  
14 just 6.2 percent or higher, the new standard would be  
15 whatever the rate would have been for the taxpayer had the  
16 business not been delinquent plus one percent.

17 So in some instances, if the business had been a very  
18 -- had a very high record of turnover and paying a lot of  
19 unemployment insurance taxes at a high experience rate, in

20 those cases the delinquent rate may actually go up. But  
21 in most cases it will be down significantly because it's  
22 plus one percent over whatever their rate would normally  
23 have been.

24 So if you look at subsection (5)(a) it talks about  
25 what it would otherwise have been plus one percent.

6

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1 Turning to section (5)(b) which is on the next to the  
2 last page here, create a new part here. The problem is:  
3 How to calculate what the rate would have been if the  
4 employer doesn't give you the information and doesn't file

5 reports. And so what we said is we will end up with  
6 giving -- treating what the rate would have been as either  
7 whatever the last annual rate was that had been assigned  
8 to the employer where we did have information or to the  
9 rate calculated under what's called the NAICS rate based  
10 on the kind of industry it is and just whatever the  
11 general rate would have been for that industry.

12 Then there are various provisions about -- you can  
13 also in effect get a lower rate, reduce it a half percent,  
14 if you enter into a deferred payment contract, meaning  
15 negotiate with the Department and agree on a payment plan  
16 essentially. And we are saying that it will be -- you  
17 also -- the employer has 30 days from the notice of when  
18 -- of the delinquent rate when the delinquent rate is  
19 assigned -- it was first assigned.

20 we've discovered that there are many instances where  
Page 13

21 the delinquent rate is assigned on a daily basis as  
22 opposed to when the annual tax -- so it would still allow  
23 the 30 days for that. And that's in subsection (d) on  
24 that next to the last page.

25 On the last page, subsection (6) talks about --

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1 basically clarified that if you're getting the delinquent  
2 rate, it can go above whatever caps exist for certain  
3 industries.

4 And subsection (7) is just intended to when you get  
5 into predecessor/successor relationships avoid a problem

6 of what to do with a deferred payment contract for the  
7 predecessor.

8 So that's the general plan of what's in here.

9 Basically, this is, again, simply intended to implement  
10 the legislation passed last year -- or earlier this year.

11 Questions or comments on this one?

12 MS. PARKER: So the driver behind these changes was  
13 the legislation that passed? Is that what you said?

14 MR. WANG: Yes. Yes, this is simply to implement the  
15 legislation that was passed. The legislation was  
16 Department-request legislation.

17 MS. PARKER: I don't have any more questions.

18 MR. WANG: You probably need to speak up when you --

19 MS. PARKER: Sorry.

20 MR. WANG: -- for the court reporter.

21 MS. PARKER: Okay.

22 MR. WANG: Anything else, anybody?

23 Let me go on to the next part then which is the  
24 package of general tax amendments. And this is a more  
25 complicated and lengthier package.

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1 what I tried to do was to shade the ones that are  
2 more substantive so that you have some idea which ones are  
3 more substantive changes verses largely which are the ones  
4 that are purely technical. And even the substantive  
5 changes are not -- for the most part are not hugely  
6 substantive. They are not huge changes. But I tried to

7 be generous in terms of saying what's substantive here.

8       The first section is a new section 192-300-090, and  
9 it is the most complicated. So it -- it gets better after  
10 this one.

11       This is dealing with three related issues. And it's  
12 hard to separate them. One is who is an active employer  
13 versus an inactive employer. Secondly, how you deal with  
14 corporate officers and when coverage of corporate officers  
15 stops. Is it for a year or for the middle of the year or  
16 what happens when you do -- what happens when you  
17 terminate coverage or try to terminate coverage the first  
18 time. And the bottom line, the simplest answer is that  
19 we're saying it's got to be for the year.

20       And the third problem is that what happens when you  
21 have corporations that do their business without employees  
22 where all the work is performed by corporate officers.

23 Under the statute, those are defined as not  
24 employers. Now, when they suddenly have an employee, then  
25 they become employers. And so there are consequences with

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1 becoming an employer in terms of corporate officer  
2 coverage. And so it gets confusing in terms of what  
3 happens when you no longer have an employee. Do you  
4 suddenly revert to being not an employer? And if so, how  
5 do you balance that against the notion of when does the  
6 corporate officer coverage -- and we said one year. So  
7 that's the -- so those are some of the tricky things in

8 here.

9           The first subsection (1) deals with simply  
10 implementing the present practice that you become an  
11 inactive employer after eight quarters. If you don't do  
12 anything, we'll treat you as inactive after eight  
13 quarters.

14           subsection (2) is that you can tell the Department,  
15 Employment Security, that you're out of business. And you  
16 can tell us you're out of business and that you're no  
17 longer intending to be in business, you no longer have  
18 employees; you just quit. And that's okay. I mean, you  
19 can tell us. You can do that and say, "We are simply out  
20 of business, and we don't want to be -- we don't want to  
21 file any more notices. We don't want to do anything. We  
22 quit." And if so, you become inactive, and we treat you  
23 as no longer an employer.

24           Now, where it gets a little confusing is if, however,  
25 you are one of those corporations with -- but you still

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1    have corporate officers, you're still in business, but you  
2    no longer have employees. We're saying you are in effect  
3    still covered for the rest of the year for those corporate  
4    officers if you're still in business as opposed to saying,  
5    "I quit and am completely out of business."

6           And we try to give examples here and try to walk  
7    through and give several examples all the way through  
8    this.

9            subsection (3) deals with the corporation with no  
10 employees for the year, is not an employer. So if you  
11 have no employees for the entire year, you are definitely  
12 -- by definition you're in effect not an employer.

13            subsection (4) on the next page deals with what  
14 happens when you reactivate. And in effect you get a new  
15 30 days to decide that your corporate officers are exempt.  
16 so we're giving a new 30 days there.

17            subsection (5) deals with essentially you can't play  
18 games going in and out of being an employer. And so if  
19 you're going to do that, we're going to treat you as an  
20 employer for the whole year.

21            That's the -- those are the key elements of that  
22 section. And I don't know if you have any questions or  
23 comments on that section.

24            Scott.

25 MR. DILLEY: What was the rationale for using the

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1 calendar year instead of by quarter or six months or

2 something like that?

3 MR. WANG: We tried to figure out how to -- frankly,

4 we went back and forth a number of times in terms of just

5 conceptualizing it. Employers when they file with the

6 IRS, if you're an employer, you're -- I mean, if you're

7 filing with the IRS, you're in it for the whole year.

8 Part of the difficulty is in terms of if you've got

9 an auditor going back afterwards and trying to establish,

10 okay, when did you quit -- it's one thing when you start,  
11 but when you quit, and especially if you've got a business  
12 where you're a corporation, you still got corporate  
13 officers, you're continuing in business but you're no  
14 longer an employee, when does the corporate officer -- how  
15 do you count that corporate officer's wages during the  
16 course of the year? Does it quit at a certain time?

17 we said, "No, we're not going to get into that.  
18 we'll just deal with it for the whole year."

19 so that was kind of -- that was partly the basis.

20 otherwise, it gets really difficult and pretty  
21 arbitrary also in terms of you -- does it terminate as of  
22 the date, in which case, How do you measure it? How do  
23 you audit that on a specific day when you no longer have  
24 an employee? Does it occur at the end of the quarter, in  
25 which case why the quarter? I mean, it just gets into an

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1 arbitrary kind of situation there. So we thought the year  
2 would be the most sense.

3 Any other questions or comments on that?

4 I'll go through the others -- some of these others  
5 fairly quickly.

6 300-100 is-- it raises -- it may raise red flags  
7 dealing with farms since you're with the Farm Bureau. But  
8 it is intended to be simply clarifying the intent of  
9 dealing with family farm.

10 The original rule only applied to corporate farms but

11 really is intended to deal with farms regardless of how  
12 you end up structuring them. And so we're just trying to  
13 reflect -- make the rule reflect that.

14 300-190 is simply to clarify dealing with what is  
15 again the inner mixture of LLC's, limited liability  
16 companies, and partnerships and so forth.

17 310-010 simply adds the EAMS provision of filing  
18 taxes.

19 Let's see. Jumping ahead to 192-310-025, this is the  
20 how payments are -- how we schedule payments in terms of  
21 when an employer's required on making -- paying taxes and  
22 makes payments, how we apply it, where do you apply it  
23 first.

24 And so in some cases we're simply implementing other  
25 bills that have not been listed in terms of penalties and

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1 things and where to put them in the payment list.

2 In part, this is also dealing with the preparation  
3 for the new "Nuggets" system and tax computer system and  
4 the sequence of payments that they have to program into  
5 it.

6 But basically the payments will be -- if payments are  
7 received separately, we add how that they are to be  
8 applied. They are applied first at present, including the  
9 last immediate quarter. This is again if you don't know  
10 -- and I can't identify what quarter the payments are for.  
11 And then it goes to oldest quarter. And then there are a

12 series of different items in here, including the knowingly  
13 failure to register and the failure to maintain records,  
14 which implement other loss over the last couple years.

15 030 -- 310-030 basically adds provisions for NSF  
16 checks and simply doing a \$25 charge for NSF checks.

17 Then there's also a provision dealing with we can  
18 waive late penalties if you file -- if it's a new  
19 employer, they say -- you say you're going to hire  
20 employees this quarter, you don't end up -- for whatever  
21 reason you don't end up hiring until next quarter, we're  
22 not going to penalize you because you didn't report it  
23 this quarter that had no employees. Or we can waive that  
24 penalty at least.

25 310-040 deals with -- has a provision dealing with

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1 on-call and standby hours. Basically this is simply  
2 intended to make things consistent to make sure that we're  
3 doing things consistently.

4 310-050, what records must be kept. This is partly  
5 implementing a 2009 law and following up on saying, Okay,  
6 what exactly must be kept then? We stuck with four  
7 calendar years for the time period of this, which is what  
8 we have in our present rules, but we gave much greater  
9 specificity in terms of what is required in terms of  
10 record keeping. So we say payroll and accounting records.

11 Let's see. We made it explicit that you got to keep  
12 quarterly and annual tax reports including your various

13 federal forms there.

14 subsection (d) implements the independent contractor

15 provision of the law from 2009.

16 subsection (e) deals with corporate officers prior to

17 2009.

18 And subsection (3) is taken verbatim from Labor and

19 Industries WACs, and we're consistent with Labor and

20 Industries on that.

21 And subsection (4) is adding reference to the 2009

22 law change.

23 Any questions on any of that stuff?

24 Going ahead to 192-310-160, it's saying that

25 corporate officers can exempt within 30 days of when you

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1 first register. And that's consistent with what we're  
2 doing currently with present policy.

3 And we're adding provisions that when you change your  
4 status from inactive to active, kind of consistent with  
5 the other WAC -- with the first WAC change that -- but  
6 when you change from inactive back you also get 30 days at  
7 that point.

8 Let's see. Subsection 310-190 is simply intended to  
9 clarify in terms of how you measure percentage ownership  
10 and what that means.

11 And moving ahead, let's see. 192-320-070 deals with  
12 relief of benefit charges. There are changes here which  
13 are -- deal with domestic violence in apprenticeship and

14 are simply to implement and conform the statute. So  
15 they're not intended to be substantive changes at all;  
16 simply conforming with the statute.

17 And let's see. This is a substantive area so I'll  
18 mention it, but it's pretty obscure. 330-150 is simply  
19 dealing with how you measure the date or when you have to  
20 notify a tribe about changes in payments.

21 And I think that's really it in terms of anything  
22 substantive, and so I'll stop there at that point.

23 Questions or comments on any of this stuff? Any  
24 reactions? Any things that you want us to be doing that  
25 are not included in here?

1           Trying to find the right balance to make it  
2   understandable but also legal and keeping those two things  
3   together as well as good policy.

4           MS. PARKER: It seems that there are several  
5   instances where we added or changed for domestic partners.  
6   Is that because of the legislation that passed? Or what  
7   is the -- I guess what was driving that?

8           MR. WANG: These are -- for the most part, we changed  
9   that actually last year when the -- after the referendum  
10  -- after the referendum passed last November. And Juanita  
11  was actually involved with changing that. There were few  
12  instances where we ended up finding some areas in the tax  
13  section that did not have that change. And so we just are  
14  putting those in.

15 MS. PARKER: Okay.

16 MR. WANG: Anything else?

17

18 Conclusion

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20 MR. WANG: Okay. Well, if there's nothing else then,

21 it's 9:32, and we'll close the meeting I guess.

22 Thank you all for coming and thank you for sharing

23 any comments.

24 (Whereupon, at 9:32 a.m.,  
25 the proceedings adjourned.)



washington.

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H. Milton Vance, CCR, CSR  
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