

[REDACTED]

From: [REDACTED]
Sent: Thursday, August 28, 2008 3:49 PM
To: [REDACTED]
Subject: Field-testing corporate officer materials
Attachments: corp off exemption-qa final draft 082708.doc; corp off exemption cover letter 082708.doc; corp off exemption-form draft 082708.doc

Donna,

Thank you for agreeing to help field-test our materials to implement the new law (effective 1/1/09) on unemployment insurance for corporate officers. We welcome your input in trying to make sure that our materials communicate effectively with your members and clients.

1. I have attached copies of the hard copy cover letter and FAQs we plan to send in late September or early October to all corporations registered with the Employment Security Department. The letter steers people to a web site if corporations want to exempt their corporate officers. We will simplify the URL of the web address in the final version of the letter. For convenience, the link for the web site is:
<http://198.238.211.90:8083/uitax/corporateofficers/exempt-officers-defined.php>. The FAQs will also be on a web site at: <http://198.238.211.90:8083/uitax/corporateofficers/faq.php>.
2. Note that we ultimately need a paper form for each corporate officer exempted, even when using the web site. The law requires signatures from both the corporate officer exempted and another corporate officer, which makes it difficult to do electronically, especially while preserving confidentiality of Social Security numbers.
3. I have also attached a copy of the paper form for requesting exemption that we will send out upon request. Because of the complexity of the law, we are concerned that this form is inherently confusing. That is one of the reasons we are encouraging use of the web site instead of enclosing the paper form with the mailing to corporations. If we send the paper form with the mail, the tendency will be to use the form instead of the web site.
4. Please note that this is only designed as a test and should only be distributed to a few sample corporations. It is not for general distribution. Please forward this e-mail only on a limited basis. We do not want the "real" request from them now, but want to see how easy it is to understand and use our materials, including whether or not people make errors in filling out the forms.
5. Feedback can be sent directly to me by e-mail, phone, fax, or mail. It would be most helpful to receive comments within 7 days (by Sept. 4), but Sept. 9 is the final deadline for comments. Completed forms will be welcome for us to review, but we will not actually process them.
6. Some of the specific comments that would be helpful are:

Does the approach of sending a letter and FAQs and referring people to a web site work?
What is confusing and what questions do you have as you read the materials and fill out forms?

Are there other questions we should address in the FAQs?
Is the web site process (including the forms there) relatively clear and easy?
Is the paper form as clear as possible?
Is the overall tone of the materials appropriate?
Are there any other suggestions you have on how to implement the law, regardless of whether or not you agree with the law?

Thank you for your cooperation and assistance.

Art

Art Wang
Special Assistant for UI Tax
UI Tax and Wage Administration
Employment Security Department
P.O. Box 9046
Olympia, WA 98507-9046



**Employment Security Department**

WASHINGTON STATE

Draft 8/27/08

Dear < Corporation >**ES Reference Number: < >****UBI Number: < >**

The Washington state legislature passed a new law that affects the way corporate officers are covered for unemployment insurance purposes. As of January 1, 2009, we will cover all of your corporate officers who provide services in Washington.

If you wish to exempt officers, you must submit a separate request for each officer, even if your company's officers were exempt under the old law. Your request must be on an approved form available on our Web site. Please go to

<http://198.238.211.90:8083/uitax/corporateofficers/exempt-officers-defined.php> [temporary site] to fill out and print copies of the form. We highly recommend using the Web site to make sure you use the proper form. If you prefer a paper form, contact **XXXXXXXXXXXX**.

You must mail us your exemption request by January 15 for the exemption to take effect the same year. If your request for exemption is received or postmarked after January 15, the exemption will start January 1 of the following year. Note: the exemption provisions of this law do not apply to nonprofit or reimbursable corporations.

After we receive your request, we will notify you if your request has been approved.

Exempting your corporate officers may avoid some state unemployment insurance costs, but may also increase your federal unemployment insurance taxes (FUTA). See the enclosed *Answers to Frequently Asked Questions* about the new law for more information. You can also read the text of the law, RCW 50.04.165, at www.rcw.go2ui.com.

If you have questions, please call your district tax office at *<phone number>*.

Thank you,

Lisa Marsh
Deputy Assistant Commissioner, UI Tax & Wage Administration
Employment Security Department

Enclosures

**FAQ for Corporate Officer Exemption
Aug. 27, 2008 – DRAFT**

**ANSWERS TO FREQUENTLY ASKED QUESTIONS –
CORPORATE OFFICER EXEMPTION**

NEW LAW COVERS CORPORATE OFFICERS FOR UNEMPLOYMENT INSURANCE

Q1. What is the new law and when does it take effect?

A. The new law changes unemployment insurance coverage of corporate officers. Under the old law, corporate officers are exempt from unemployment insurance unless the employer elects to cover them. Under the new law, corporate officers who provide services in Washington are covered for unemployment insurance unless the employer exempts them. The new law takes effect on January 1, 2009.

Q2. What does it mean to be covered by unemployment insurance?

A. If your corporate officers are covered for unemployment, it means you must report them as employees and pay taxes on their wages each quarter. It also means that they may be eligible for unemployment benefits if they lose their jobs.

If you decide to exempt your officers from coverage, you do not report them or pay state unemployment taxes for them and they are not eligible for benefits if they lose their jobs. However, **you will have to pay full federal unemployment insurance taxes (FUTA)** on them. See Q8.

Q3. Our officers are already exempt from unemployment coverage. Do I have to do anything?

A. Yes. Under the old law, corporate officers were exempt from coverage unless they requested coverage. Under the new law, **corporations with employees must request to exempt their officers or they will be covered**. If you want your officers to remain exempt, you must submit an exemption form. Go to <http://198.238.211.90:8083/uitax/corporateofficers/exempt-officers-defined.php> **[temporary website]** to fill out an exemption form. We highly recommend using the Web site to make sure you get the proper form. You may also obtain a paper form by contacting _____

Q4. Do I have to fill out a form?

A. If you want your corporate officers to be covered by unemployment insurance, you do not need to do anything. If you wish to exempt them, you must submit an exemption form for each officer. Go to <http://198.238.211.90:8083/uitax/corporateofficers/exempt-officers-defined.php> **[temporary website]** to fill out an exemption form. We highly recommend using the Web site to make sure you get the proper form. However, you may also obtain a paper form by contacting _____.

Q5. Whom do I call if I have questions or need help with the form?

A. Please call your district tax office.

Q6. If we have corporate officers, but no employees, do we have to do anything to exempt the officers?

A. No. If a corporation has no employees and all personal services are performed by bona fide corporate officers, it is not considered an employer unless it elects to cover its officers (RCW 50.04.080(3)). Because it is not an employer, corporate officers will continue to be uncovered, so the corporation does not need to exempt them.

HOW WILL THIS AFFECT MY UNEMPLOYMENT TAXES?

Q7. How will this affect my state unemployment taxes?

A. Covering your corporate officers will mean that you must include the officers and their in-state wages in the quarterly reports that you file for unemployment insurance. You will pay state unemployment taxes on your corporate officers each quarter just as you do for all other corporate employees.

Q8. If I exempt corporate officers from state coverage, will this affect my federal taxes?

A. Yes. **If you exempt your officers from state coverage, you will lose your tax credit for them on FUTA taxes.** Your total taxes (state taxes and FUTA) may go up or down depending on the salaries of individual corporate officers and your state tax rate.

Q9. Will my total state and federal unemployment taxes go up or down if I exempt corporate officers?

A. The exemption applies in 2009 and some variables cannot be determined yet, but here is what would happen using current state and federal rates. The two determining factors are:

- The salary you pay the corporate officer; and
- Your corporation's state tax rate.

Generally speaking, your corporation will pay **more** total taxes if:

- You exempt a corporate officer who receives \$7,000 or less in wages and your state tax rate is less than 5.4 percent in 2009; or
- You exempt a corporate officer who receives \$35,700 or more in wages and your state tax rate is less than 1.06 percent in 2009.

In order to determine the breakeven point for exempting officers, divide the maximum credit allowed under federal law (5.4 percent times the federal taxable wage base of \$7,000, or \$378 in 2008) by the corporate officer's salary up to a maximum of the state taxable wage base (\$35,700 in 2009). If your state tax rate

is lower than this breakeven point, you will pay more total taxes if you exempt the corporate officer. However, your corporation's specific tax rate for 2009 and subsequent years cannot be calculated yet.

You may wish to consult your bookkeeper or accountant about the impact of exempting corporate officers on your state and federal unemployment taxes. We cannot answer questions about what will happen to your specific tax rates for state or federal taxes.

WHAT BUSINESSES ARE AFFECTED BY THE NEW LAW? WHO IS COVERED?

Q10. Does the new law apply to businesses other than corporations?

A. No. The new law only applies to corporate officers in corporations. It does not apply to sole proprietors, partnerships, or limited liability companies (LLCs).

Q11. Does the new law apply to board members or just corporate officers?

A. The new law applies to corporate officers; it does not apply to board members of corporations unless they are also corporate officers. Corporate officers include the people authorized as such in your corporation's bylaws.

Q12. Does the new law apply to nonprofit corporations?

A. In general, no. In fact, federal law dictates that nonprofits that are exempt under section 501(c)(3) of the federal tax code and those that are reimbursable cannot exempt their corporate officers from unemployment coverage.

NOTE: Nonprofit corporations do not need to register or report volunteer officers. Therefore, there is no need to exempt them. This does not change under the new law.

There may be uncommon circumstances in which a corporate officer of a nonprofit corporation that is not a tax-exempt 501(c)(3) organization earns wages from the corporation and seeks exemption. In those circumstances, we will treat the exemption for the nonprofit corporation the same as for a private corporation.

Q13. Does the new law mean that I no longer have to register corporate officers?

A. No. You are required by current law to register your corporate officers with the Employment Security Department. This still applies regardless of whether your corporate officers are covered or exempt under the new law. See Questions & Answers on corporate officer registration.

WHAT CORPORATE OFFICERS CAN BE EXEMPT?

Q14. Can I exempt some corporate officers and not others?

Yes. Nothing in the law restricts a corporation from choosing to exempt some officers and not others. However, once you choose to exempt an officer, the corporation cannot elect to reinstate the officer except under very limited conditions. (See Q21.)

Q15. How many officers can I exempt?

A. It depends on whether your corporation is private or public.

Private corporations* may exempt	Public corporations* may exempt
<p>Up to eight corporate officers who:</p> <ul style="list-style-type: none"> • Are voluntarily elected or appointed under the articles of incorporation or bylaws of the corporation; and • Exercise substantial control of the daily management of the corporation. <p style="text-align: center;">OR</p> <p>Any number of corporate officers if all of the officers being exempted are related by blood within the third degree or by marriage**.</p>	<p>Any number of corporate officers who:</p> <ul style="list-style-type: none"> • Are voluntarily elected or appointed under the articles of incorporation or bylaws of the corporation; • Exercise substantial control of the daily management of the corporation; • Are shareholders; and • Have primary responsibilities which do not include manual labor.

* *Public corporations* have a class of shares registered with the federal Securities and Exchange Commission. *Private corporations* do not.

** Includes spouse, children, grandchildren, great grandchildren, brothers and sisters, nephews and nieces, parents, grandparents, great grandparents, aunts and uncles. Legal adoptions or step-relatives are included.

Q16. How will I know that my request for exemption or reinstatement was approved?

A. We will notify you if we have approved your request.

Q17. What if you disapprove my request?

A. We will notify you if we disapprove your request for exemption or reinstatement. If this results in an order and notice of assessment or denial of a refund, you may appeal that decision.

Q18. After I have requested an exemption, when does it take effect?

A. If you request an exemption when you first register as an employer, it takes effect immediately. If you request an exemption after your business is established, you must send your request to us by January 15 for the exemption to be effective for that year.

Q19. What if I send my request for exemption after January 15?

A. If postmarked after January 15, the exemption will not take effect until the following year. We do not apply the exemption retroactively if you do not send your request by January 15.

Q20. What about refunds?

- A. We will not give a refund or credit for periods before the effective date of the exemption.

REINSTATEMENT OF COVERAGE

Q21. When does an exemption end?

- A. An exemption ends immediately for private and public company corporate officers who no longer qualify for the exemption. For example, the officer may no longer be a shareholder of a public corporation or may no longer be a bona fide elected or appointed corporate officer. However, officers of private companies must have a reason other than canceling their voluntary exemption agreement to end their exemption. For instance, the exemption does not end only because an officer of a private company withdraws their voluntary agreement to be exempted.

An exemption for an officer also ends at five year intervals if you send us written notice by January 15 requesting reinstatement. Reinstatement is only effective the first day of the calendar year at set intervals of five years beginning January 1, 2014, then January 1, 2019, and every five years after that.

Q22. What if there is a change in status for an exempted corporate officer?

- A. You must submit any changes in corporate officers on the Update Ownership Information form (5208C-2) with your quarterly tax reports.

Q23. What about any taxes owed for reinstated officers?

- A. Your company is responsible for any taxes, penalties and interest due if coverage is reinstated, regardless of whether you gave notice about the termination of the exemption.

Q24. Under what circumstances is a reinstatement request denied?

- A. We will not reinstate coverage for a corporate officer if your company:
- Committed tax-related fraud within the last five years;
 - Is delinquent in paying its taxes; or
 - Is currently assigned a delinquent tax rate.

Q25. Is there a form for reinstatement requests?

- A. No special form is needed. Send us a letter that includes:
- Name, address, and telephone number of your corporation;
 - Employment Security account number;
 - Name(s) and Social Security numbers of corporate officer(s) to be reinstated.

BENEFITS

Q26. Are there special rules for when corporate officers may receive unemployment benefits?

- A. Yes. Effective, January 1, 2008, there are special rules which apply only when a corporate officer owns 10 percent or more of the corporation or is a family member (related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild) of another corporate officer who owns 10 percent or more of the corporation. In those circumstances, the corporate officer may not be eligible for unemployment benefits unless the officer resigns or is removed as corporate officer or if the corporation dissolves. See WAC 192-310-190 for more details.

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Request to exempt corporate officers from unemployment-insurance coverage

GENERAL INFORMATION DRAFT 8/27/08

Corporations can exempt their officers from unemployment coverage if they earn wages in the state of Washington and meet the criteria below. This does **not** apply to nonprofit corporations.

INSTRUCTIONS (We encourage you to use the on-line form instead of this form. Go to: taxforms.go2ui.com)

1. Complete *Part 2* of the form on the other side of this paper.
2. Make copies of this form if you are exempting more than one corporate officer.
3. Have the officer you are exempting complete and sign *Part 3* of the form.
4. Have another officer of the corporation sign *Part 4* of the form, if there is more than one officer.
5. Return the form to:

Fax: 360-902-9264

Mail: Employment Security Department
UI Tax and Wage Administration/Status
P.O. Box 9046
Olympia, WA 98507-9046

NOTES

Officers who are exempted may not be able to collect unemployment benefits if they lose their jobs. The corporation should not report these officers as employees on its unemployment tax reports.

- If you exempt corporate officers, you will have to pay full federal unemployment taxes (FUTA) on them. This may cost more than state taxes, depending on tax rate and salaries.
- You must submit this form by January 15 of the year in which you want the exemption to take effect. If you submit the form after January 15, the exemption will not take effect until the following year. New businesses may submit the form when they register with the department, and the exemption will take effect immediately.
- Once exempted, the right to reinstate coverage is very limited. (WAC 192-310-170)

Private corporations* may exempt	Public corporations* may exempt
<p>Up to eight corporate officers who:</p> <ul style="list-style-type: none"> • Are voluntarily elected or appointed under the articles of incorporation or bylaws of the corporation; and • Exercise substantial control of the daily management of the corporation. <p style="text-align: center;">OR</p> <p>Any number of corporate officers if all of the officers being exempted are related by blood within the third degree or by marriage**.</p>	<p>Any number of corporate officers who:</p> <ul style="list-style-type: none"> • Are voluntarily elected or appointed under the articles of incorporation or bylaws of the corporation; and • Exercise substantial control of the daily management of the corporation; and • Are shareholders; and • Have primary responsibilities which do not include manual labor.

* *Public corporations* have a class of shares registered with the federal Securities and Exchange Commission. *Private corporations* do not.

** Includes the individual and his or her spouse, children, grandchildren, great grandchildren, brothers and sisters, nephews and nieces, parents, grandparents, great grandparents, aunts and uncles, and the spouses of any of these family members. Legal adoptions or step-relatives are included.



Request to exempt corporate officers from unemployment-insurance coverage

• PART 1. GENERAL INFORMATION

DRAFT 8/27/08

Business Name _____

ES Reference Number _____

Business Phone _____

UBI Number _____

Mailing Address _____

PART 2. PREPARER INFORMATION

Name: _____ Title: _____

Phone: (____) _____ E-mail: _____

Total number of corporate officers being exempted: _____

PART 3. INDIVIDUAL CORPORATE OFFICER BEING EXEMPTED

Name: _____ Social Security Number: _____

Are you an officer for a private or public corporation*? Private Public

If you checked "private," are you related to **all** other corporate officers of this company, either by blood within the third degree or by marriage**? Yes No

If you checked "private" and you are not related to all other officers, do you voluntarily agree to be exempt from unemployment coverage? Yes No (Note: If there are more than eight officers and you are not all related, up to eight of you can be exempt from coverage.)

I certify the above information is correct and that I meet the criteria (see other side) to be exempt.

Signature: _____ Date: _____

* *Public corporations* have a class of shares registered with the federal Securities and Exchange Commission. *Private corporations* do not.

** Includes the individual and his or her spouse, children, grandchildren, great grandchildren, brothers and sisters, nephews and nieces, parents, grandparents, great grandparents, aunts and uncles, and the spouses of any of these family members. Legal adoptions or step-relatives are included.

PART 4. VERIFICATION BY ANOTHER CORPORATE OFFICER (If corporation has more than one officer)

I verify this officer's decision to be exempt from unemployment benefits.

Name: _____

Signature: _____ Date: _____

Submit this form by fax to 360-902-9264 or by mail to Employment Security Department, UI Tax and Wage Administration/Status, P.O. Box 9046, Olympia, WA 98507-9046. Additional forms are available online at taxforms.go2ui.com.

Unemployment insurance for corporate officers

Changes in state law go into effect on January 15

Should corporate officers be exempt from unemployment insurance? Washington corporations have only a few days left to decide before a new state law takes effect on January 15.

"It used to be that officers were exempt from coverage unless the corporation chose to cover them," said Employment Security Commissioner Karen Lee. "Now, the default assumption is that officers are covered."

Under the old law, corporate officers are exempt from unemployment insurance unless their employer elects to cover them. Beginning January 1, 2009, corporate officers who provide services in Washington are covered for unemployment insurance unless their employer specifically exempts them. Officers whose employers previously exempted them from coverage must be re-exempted under the new law.

Corporations who want their officers to be covered by unemployment insurance do not need to file for coverage, but must include the officers and their in-state wages in the unemployment-insurance quarterly reports beginning in 2009. State unemployment taxes on corporate officers must be paid each quarter, and they may be eligible for unemployment benefits if they lose their jobs.

If corporations decide to exempt any officers from coverage, a separate exemption form must be submitted for each officer. Corporations will not report or pay state unemployment taxes for them, and they are not eligible for benefits if they lose their jobs. However, corporations will lose their tax credit on Federal Unemployment Tax Act (FUTA) taxes. Exemption requests must be postmarked by January 15, 2009, for the exemption to take effect in 2009. If the request for exemption is received or postmarked after January 15, the exemption will start January 1, 2010. Exemption forms are available at TaxForms.go2ui.com.

"Whether it makes sense to exempt officers will depend on the circumstances of each corporation," Lee said. "Total taxes, including state taxes and FUTA, may go up or down depending on the officers' salaries and the corporation's tax rate."