

## Hidden Traps at the Texas Workforce Commission

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Book: [www.twc.state.tx.us/news/efte/tocmain2.html](http://www.twc.state.tx.us/news/efte/tocmain2.html)

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## Corporate Officers / Members of LLCs

- Corporate officers and members of LLCs who perform services for pay for their entities are employees of those entities.
- *Texas Carbonate v. Phinney*, 307 F.2d 289 (5th Cir. 1962), cert. denied, 371 U.S. 940 (1962): a corporate officer is employed by his or her own corporate entity.
- Legal presumption: a corporate officer who performs services for his or her corporation for compensation does so for the benefit of the corporation he or she serves, and each such officer directs and controls his own work on behalf of the corporation.
- LLCs: <http://www.twc.state.tx.us/tax-law-manual-chapter-1-employing-unit-3#1.5.3>

## **Transfers of Compensation Experience**

- Successor in an acquisition of one business by another acquires the UI compensation experience of the predecessor, if:
  - the successor acquires all or part of the organization, trade, or business of the predecessor, and
  - there is shared ownership or officer-level management between the two entities.
- Partial transfer is possible within two years of an acquisition if the acquired portion is separately identifiable and segregable, if:
  - predecessor and successor jointly apply, and
  - they submit up to four years' worth of wage records.

## **Payrolling**

- "Common paymaster": separate, related companies establish an entity solely for the purpose of handling personnel and payroll matters for the members of that group, or else allow one of the members of the group to handle payroll matters for the rest of the group's members, either for an administrative fee or as a matter of convenience.
- Section 201.046 of the Act provides that the employer is the employing unit that receives the benefit of the work performed, regardless of whether the employees are hired and paid by the employing unit or its agent.

## **Payrolling - 2**

- In a payrolling situation involving a common paymaster, each separate employing unit receives the benefit of the services provided by the employees working at each location.
- Employing units with separate identities, i.e., separate corporate charters and the like, are separate business entities and thus separate employing units.
- TWC's position is that "payrolling companies" are not single employing units for the purposes of reporting wages and paying state UI tax.

## **How Audits Get Started**

- Former employee files unemployment claim – TWC finds no wages reported and disallows the claim – claimant appeals – this is the highest priority Tax Department investigation – TWC may end up notifying IRS
- “Tattle-tale” letter from employees or competitors
- Random audit – TWC tries to do 1% of all employers each year (DOL guideline)
- Program audit – targeted industries or regions – examples: hair salon industry in the late 1980s, landscape and construction firms in past decade

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