

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

Senate Bill 794 (Senators Pugh and Jones)
 Finance

Unemployment Insurance - Exemption from Covered Employment - Passenger Motor Vehicle Drivers

This bill exempts work performed by a driver of a passenger motor vehicle with a capacity of up to 15 people from unemployment insurance (UI) coverage.

Fiscal Summary

Unemployment Insurance Trust Fund (UITF): UITF revenues decrease by \$3.8 million in FY 011 as UI taxes are not assessed to employers of passenger motor vehicle drivers. Future year revenues reflect a reduction in employer charge-backs and annualization. UITF expenditures decrease by \$60,500 in FY 2011 for decreased UI benefits payments. Future years reflect increases in average weekly benefit amounts and annualization.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
UITF Revenues	(\$3,760,200)	(\$4,190,900)	(\$4,208,600)	(\$4,226,800)	(\$4,232,700)
UITF Expenses	60,500	83,000	85,500	88,100	90,700
Net Effect	(\$3,699,700)	(\$4,107,800)	(\$4,123,000)	(\$4,138,700)	(\$4,142,000)

State Effect: Potential significant loss of federal UI revenues if a determination is made that Maryland law is out of conformity with federal unemployment insurance law, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Work performed by a passenger motor vehicle driver who owns or leases a passenger motor vehicle and uses the vehicle to transport passengers who have arranged for the transportation through a third party for compensation is not covered employment for purposes of UI. A passenger motor vehicle does not include a taxicab.

The Secretary of Labor, Licensing, and Regulation must be satisfied that the driver and third party have entered into a written agreement that is currently in effect for the use of the motor vehicle to transport passengers who have arranged for the transportation through the third party. If the driver leases the motor vehicle from the third party or any affiliate of the third party, a written lease must be in effect where the amount of the lease payments are not determined based on the amount of revenue received by the driver for transporting passengers. The driver must be responsible for paying all operating costs of the motor vehicle, and the written agreement must state that the driver is responsible for all State and federal income taxes and that the work is not covered employment for UI purposes.

Current Law: Passenger motor vehicle drivers are considered covered employees for UI purposes. Covered employment is defined as work performed by an individual for an employing unit.

Independent contractors working under any contract of hire are not covered under UI if three conditions are met. First, the individual who performs the work has to be free from control and direction over his or her performance both in fact and under the contract. Second, the individual customarily has to be engaged in an independent business or occupation of the same nature as that involved in the work. Third, the work has to be outside of the usual course of business of the person for whom the work is performed or performed outside of any place of business of the person for whom the work is performed.

Background: Unemployment benefits are funded through Maryland employers' State UI taxes. All private business employers and nonprofit employers employing one or more persons, at any time, are subject to the Maryland Unemployment Insurance Law. An employer's tax rate is based on the employer's unemployment history and ranges within a certain percentage of the total taxable wages of the employer's employees. The taxes are deposited in UITF and can be used only to pay benefits to eligible unemployed individuals.

An individual performing services for a business in return for compensation in the form of wages is likely covered for UI purposes. The employer reports the wages to the Division of Unemployment Insurance and pays UI taxes on those wages. If a person is not a covered employee, the person's wages are not reported, and the employer does not pay UI taxes for those services.

The Federal Unemployment Tax Act (FUTA) requires all services performed by employees of state and local governments, certain nonprofit organizations, and federally recognized Indian tribes, to be considered covered employment by state law unless they are specifically exempted by federal law. Most exemptions from covered employment under Maryland law mirror FUTA exemptions. Maryland has enacted State-only exemptions not included in FUTA (*e.g.*, yacht salespersons, Class E and F truck drivers, recreational sports officials, and messenger service drivers), but they do not apply to State and local government or certain nonprofit organizations. If State law does not cover services performed for State and local governmental entities, federally recommended Indian tribes and certain nonprofit organizations, as required by FUTA, the result is the loss of certification for *all* employers in the State.

Unemployment Insurance Trust Fund Effect:

Trust Fund Revenues

In general, UITF revenues decrease for each employee exempted from UI coverage as employers no longer make UI contributions for exempt employees. UITF revenues also decrease from a reduction of employer charge-backs, which an employer would be charged to repay a portion of UI benefits paid to former employees.

Based on taxable wages in 2009, the Department of Labor, Licensing, and Regulation (DLLR) estimates that employers classified as establishments primarily engaged in providing passenger transportation by automobile or van that are not operated over regular routes and on regular schedules pay an estimated \$4.2 million in UI employer contributions annually. As a result, UITF revenues decrease by \$3.8 million in fiscal 2011, which accounts for the bill's October 1 effective date. UITF revenues are reduced by \$4.2 million in fiscal 2012 and annually thereafter.

Of the amount of UI benefits paid to individuals, approximately 64.1% of the benefits paid are charged back to one or more employers over a three-year period, beginning the year following benefits payment. The difference that cannot be charged back to private-sector employers is, ultimately, recovered through premiums paid by all employers. As UITF expenditures for benefits decrease, UITF revenues from employer charge-backs are also reduced. Thus, UITF revenues further decrease by \$12,900 in fiscal 2012, by \$30,600 in fiscal 2013, by \$48,900 in fiscal 2014, and by \$54,800 in fiscal 2015.

Trust Fund Expenditures

Passenger motor vehicle drivers that become exempt from UI coverage will no longer be eligible to receive UI benefits. Based on the average amount of UI benefits paid to such employees over the past three years, UITF expenditures decrease by approximately \$60,500 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. Expenditures decrease by \$83,000 in fiscal 2012, \$85,500 in fiscal 2013, \$88,100 in fiscal 2014, and \$90,700 in fiscal 2015. The following facts and assumptions were used in this estimate:

- the average weekly benefit amount is \$310 and increases by 3% each year; and
- each benefit recipient receives on average 17 weeks of unemployment benefits.

State Fiscal Effect: The administration of Maryland's UI program is 100% federally funded. The Maryland Unemployment Insurance Program receives at least \$69.0 million annually. Under a worst-case scenario, if Maryland were found to be out of conformity with federal law, administrative funding provided by the federal government may be cut.

Many not-for-profit organizations and some governmental agencies utilize vans that hold no more than 15 passengers. Under the bill there is nothing to preclude these organizations from exempting employees from UI coverage. The vans could be leased by the organization to the driver and the organization would direct the driver to the clients to be transported. Examples of these organizations are those serving the disabled and the elderly. Under provisions of FUTA, services performed by employees of not-for-profit organizations and governmental entities can only be exempt from UI coverage if the services are exempt under FUTA. These services are not exempt under FUTA.

Small Business Effect: If State law does not cover services performed for State and local governmental entities, federally recognized Indian tribes and certain nonprofit organizations under UI, as required by FUTA, the result is the loss of certification for *all* employers in the State.

For employers with employees that are exempt from UI coverage under State law, State UI tax liability will decrease; however, as these services are not exempt under federal law, federal unemployment tax liabilities will increase. If an employer has paid all State taxes due on services, then the employer is allowed a federal unemployment tax credit under which the employer pays 0.8% of the first \$7,000 in wages of each employee or \$56 per employee per year. If State UI taxes are not paid on these employees, then the tax credits are not allowed and the employer must pay the full federal tax of 6.2% or \$434 per employee per year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Public Service Commission; Department of Legislative Services

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Analysis by: Erik P. Timme

Direct Inquiries to:
(410) 946-5510
(301) 970-5510