Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 214 (Senator Salling)
Finance

Unemployment Insurance – Computation of Earned Rate of Contribution – Applicable Table of Rates

This bill requires that, notwithstanding any other provision of law, Table A be used when calculating an employer's earned rate of contribution (for purposes of determining unemployment insurance (UI) taxes). **The bill takes effect June 1, 2021, and remains in effect until one year after the state of emergency declared by the Governor due to the COVID-19 pandemic ends.**

Fiscal Summary

State Effect: Federal fund revenues and expenditures for the Maryland Department of Labor (MDL) increase to the extent that the department requires additional administrative funding to implement the bill, beginning as early as FY 2021. Nonbudgeted Unemployment Insurance Trust Fund (UITF) revenues decrease significantly beginning in FY 2021, as discussed below. Nonbudgeted UITF expenditures are affected only to the extent that funds are used to repay the principal on outstanding loans. General fund expenditures likely increase for interest payments, beginning as early as FY 2022.

Local Effect: None. Local governments reimburse UITF dollar-for-dollar and are unaffected by UI tax table changes.

Small Business Effect: Meaningful.

Analysis

Current Law: UI is administered and funded through a federal-state partnership. Funding for each state program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Most Maryland employers pay State UI taxes, although State and local governments and some nonprofit organizations reimburse UITF for claims paid in lieu of paying taxes. Therefore, for most Maryland employers, the State UI tax rate is a function of:

- the employer's specific unemployment claims history; and
- the applicable tax table, which is based on the State's UITF balance and applies to most taxable employers.

Determining Employer Tax Rates

The typical process is as follows. On July 1 each year, the relative amount of UI claims in the three immediately preceding fiscal ("rating") years is used to determine an employer's benefit ratio. For example, calendar 2020 employer taxes were based on UI claims made from fiscal 2017 through 2019. Specifically, the benefit ratio is calculated as the sum of the benefits charged to an employer's account (*i.e.,* the amounts paid to unemployed individuals) divided by the employer's taxable wages during that time. Taxable wages are defined as the first $8,500 earned by each covered employee in a calendar year. The benefit ratio is then applied to the tax rate table, which is determined by measuring the adequacy of UITF to pay benefits, to determine an employer's tax rate. Taxes are billed quarterly. **Exhibit 1** shows the range of State UI taxes a typical employer owes based on the tax table in effect; there are other rates for new employers and in other limited circumstances.

Generally, the tax table determination is made September 30 each year for the upcoming year and is based on the UITF balance as a percentage of taxable wages in the State. However, Chapter 337 of 2016 requires federal solvency guidelines to be met before the State moves to a tax table with lower rates. Put another way, under existing State law, since the State has moved out of Table A and into Table F, it will not move to any other tax table until the UITF balance meets federal solvency guidelines, even if it would otherwise do so. At the time of passage, the Administration indicated the UITF balance necessary to meet the federal solvency guidelines was about $1.5 billion; however, the guidelines are based in part on the highest annual amounts of benefits paid and are, therefore, subject to change due to the effects of COVID-19 on the economy.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

Tax Table	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages: Exceeds	Up to	Trust Fund Balance ($ in Millions)*: Exceeds	Up to	Then Next Year's Tax Rates Range from… No Claims	Single Claim*	Up to	Annual Tax Per Employee (Rate x $8,500)*: No Claims	Single Claim*	Up to
A	5.00%	N/A	$995.8	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	896.2	$995.8	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	796.6	896.2	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	697.1	796.6	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	597.5	697.1	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	597.5	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2020 taxable wage base and are subject to change each year. A "single claim" represents the tax rate applicable to the lowest possible rate associated with nonzero (.0001 to .0027) benefit ratios. Taxes are applied to the first $8,500 earned by each employee, each year; compensation less than that amount reduces taxes owed accordingly. Table F is in effect in 2021 and is likely to be in effect for several more years; Table A had been in effect since 2016.

Source: Department of Legislative Services

Executive Order Limiting Effect of COVID-19 Claims on Employer Taxes

As discussed above, the typical process for determining an employer's benefit ratio involves a lookback period over the three immediately preceding fiscal years; for calendar 2021 taxes, the period would normally be fiscal 2018 through 2020, which includes the first four months of UI claims due to COVID-19. However, in December 020, the Governor signed an executive order that effectively freezes employer benefit ratios in place at their 2020 tax levels. The executive order remains in effect until after the termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

Under the executive order, employers will pay taxes in Table F in 2021, but based on pre-pandemic employment claims history, which will generally result in an employer's taxes being less than they otherwise would have been.

State Fiscal Effect:

Administrative Costs

MDL indicates information technology costs of approximately $75,000 are necessary to implement the bill, in addition to various other administrative expenses. The timing of the bill, which changes a tax table mid-year, adds complexity to the process. If existing federal administrative funds are insufficient to cover such expenses, additional above-base federal funding will be provided, assuming that the expenses are allowable, beginning as early as fiscal 2021. Otherwise, general funds are needed to cover those costs.

Unemployment Insurance Trust Fund and Related Impacts

Under current law, the State is in Table F in 2021, with the Governor's executive order freezing employer benefit ratios also in effect. The bill moves the State to Table A, effective June 1, 2021, and the State will remain in Table A until one year after the state of emergency ends. Based on current UI claims and UITF balance, the State would likely otherwise be in Table F during those years. Historically, Table F collects two or three times as much revenue on an annual basis as Table A, but revenues fluctuate based on employer experience and taxable wages, which change year-to-year. Therefore, a precise estimate of the total UITF effect is unknowable.

However, nonbudgeted UITF revenues decrease by about 50% to 66% from what they otherwise would have been, beginning June 1, 2021, and through the duration of the bill. Assuming the state of emergency ends in the second half of 2021, UITF revenues decrease through the beginning of fiscal 2023. If the state of emergency continues beyond that time, the effect on UITF revenues (and general fund expenditures for interest payments, discussed below) increases.

MDL estimates the difference between Table A and Table F revenues at $690 million in 2021 and $525 million in 2022. The Department of Legislative Services advises that these estimates appear within a reasonable expected range. Based on those estimates, the bill decreases UITF revenues by about $600 million in fiscal 2022, and decreases UITF revenues significantly thereafter for its duration.

Depending on the UITF balance (or lack thereof) over time, the bill's UITF revenue reduction likely represents an increase in net borrowing. Interest on balances owed to the federal government must be paid back – with State general funds or some other source, not UITF – at the end of each September. The current interest rate on federal loans for UI programs is 2.277%, although that is deferred through mid-March 2021 under the December stimulus bill. Interest payments would begin as early as fiscal 2022.

UITF expenditures are affected only to the extent that funds are used to repay the principal on outstanding loans, beginning as early as mid-fiscal 2022.

Small Business Effect: Generally, small businesses pay, on average, about one-third to one-half of the State UI taxes they otherwise would for the duration of the bill. The difference, based on historical averages, is $200 to $300 per employee. However, not all businesses pay UI taxes based on the table of rates. New employers pay a fixed rate, currently 2.6%, which is not affected by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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