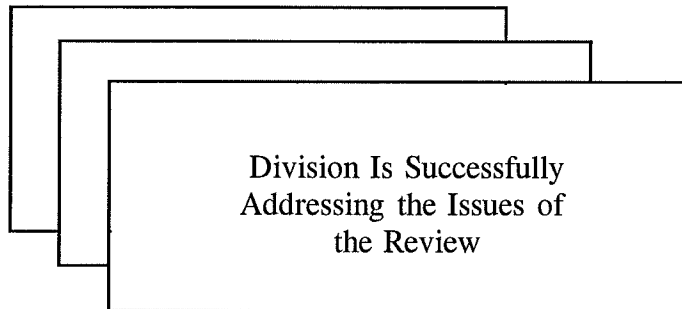


STATE OF WEST VIRGINIA

**UPDATE
OF THE
UNEMPLOYMENT COMPENSATION
DIVISION**

PRELIMINARY REVIEW



OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation & Research Division
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25305

PE95-20-41

**UNEMPLOYMENT COMPENSATION SUBCOMMITTEE OF
GOVERNMENT OPERATIONS**

House of Delegates

Sam Love
Douglas Stalnaker

Senate

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September, 1995

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Antonio E. Jones, Ph.D.
Director

September 17, 1995


The Honorable Larry Wiedebusch
State Senate
403 Fern Drive
Glen Dale, West Virginia 26038

The Honorable Sam Love
House of Delegates
R.D. 1, Box 760
Weirton, West Virginia 26062

Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting this Update to the Preliminary Performance Review of the Unemployment Compensation Division, which will be reported to the Subcommittee on Unemployment Compensation on Sunday, September 17, 1995. The issue covered herein is "Division is Successfully Addressing the Issues of the Review."

Sincerely,


Antonio E. Jones

AEJ/wsc

Enclosure

c: Senator A. Keith Wagner
Delegate Joe Martin

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UPDATE OF THE UNEMPLOYMENT COMPENSATION DIVISION PERFORMANCE REVIEW

Executive Summary

At the May, 1995 interim meeting of the Joint Committee on Government Operations, the Performance Review of the WV Unemployment Compensation Division was presented to the committee. At the request of committee members, a subcommittee was created to further study the findings of the review. This subcommittee met at the June and July interims of 1995. The following is an update of the progress of the Division's response to the findings since May, 1995.

The performance review included eight recommendations for either the Division or the Legislature to address. **The central finding was that several hundred employers throughout the state were consistently delinquent on the payment of Unemployment Contributions.** Six of the eight findings dealt with this topic. Additionally, the reversal rate of the decisions by deputies at local offices on cases involving benefit disputes was scrutinized. The final two recommendations were offered as possible methods of minimizing differences in interpretation between the deputies and the Administrative Law Judges. This was considered a minor issue, and the recommendations were merely put to the Division to study their practicality.

Cooperation between the Subcommittee and the Division has achieved many of the desired results. The tax intercept system recommended in the audit report was initiated, and has intercepted a total of \$29,202.10. An additional \$31,301.00 was obtained through an agreement with the Division of Labor, through which any contractor who is delinquent with the Division is denied renewal of license. **Although the Division did not agree with every recommendation, it has taken steps toward addressing the finding, and has combined audit recommendations, subcommittee suggestions and its own innovations to create such a process.** The PERD is satisfied that, as of September 1, 1995, proper steps are being taken to rectify the major finding of the audit.

This update will address each recommendation individually, including the response of the Division to the recommendation, and any comments by the PERD concerning the response. The findings of the review have been addressed, and differences between the recommendations themselves and the actions of the Division have been reconciled.

The Division has also provided PERD with updates on the lists of employers delinquent by more than \$100,000 or by more than seven years. As Appendix C shows, the Legal Division should continue to address the problem of some employers consistently not paying their unemployment taxes. The updated versions of these lists including current status can be found in the Appendices.

ISSUE AREA 1: Employers Are Currently \$19 Million Delinquent In Unemployment Tax Payments

Recommendation 1

The PERD recommends that the Bureau propose legislative amendments to Chapter 21A, Article 5, Section 4 to provide for specific penalties for failure to remit unemployment taxes due on a quarterly basis. This would eliminate the uncertainty of whether penalties provided under 21A-10-10 apply to the delinquency of unemployment taxes. The legal section should then use this as enforcement power and criminal proceedings should be brought against delinquent employers.

Agency Response:

The Bureau concurs with this recommendation and will propose suggested legislative amendments.

PERD Comment:

As Appendix C shows the problem of continued delinquency should be addressed through legislation. Ideas for consideration could include the denial professional licenses for failure to pay unemployment taxes. This method appears to be working with contractors and should be explored in other areas as well.

Recommendation 2

The legal section should begin a more vigorous approach to collecting delinquent unemployment taxes through a greater use of the legal provisions in §21A-5-16. The PERD recommends the Bureau propose legislative amendments to §21A-5-16(3) that would specify state tax refunds as personal property. It is further recommended that legislative rules be promulgated to establish a state tax refund intercept mechanism similar to the one used by the Child Advocate Office to ensure a constitutionally sound procedure. The PERD also recommends promulgating rules for the unemployment tax collection process similar to those in effect for Workers' Compensation.

Agency Response:

The Bureau concurs with the concept of defining tax refunds as personal property but questions the appropriateness of utilizing Chapter 21A as the vehicle to change that definition. It is our opinion that Chapter 11 of the State Code would be more appropriate to amend.

PERD Comments:

PERD agrees with the Bureau's opinion.

Recommendation 3

The Legal Division of the Bureau has separate sections dealing with Unemployment Compensation issues and with Workers' Compensation issues. The PERD recommends that the section of the Legal Division which deals with unemployment accounts be placed directly under the jurisdiction of the Unemployment Compensation Division. Since the primary function of this section of the Legal Division is integral to the collection process, the manager of collections is best suited to oversee the legal aspects of the collection of delinquent taxes. This reorganization would provide for a more coordinated effort to recover delinquent taxes.

Agency Response:

The Bureau disagrees with this recommendation as stated. Basically, we reiterate the response in the previous draft of this audit report.

The assignment of administrative staff should be addressed utilizing policy discretion. As indicated in the previous response, upper management at that time was actively soliciting an additional attorney for the various functions of the Bureau of Employment Programs, including the Unemployment Compensation Division. We progressed by hiring the additional attorney. However, she resigned to take another position in the private sector. We are in the process of recruiting an attorney to replace the departed individual. Part of this new attorney's responsibilities will be the exploration of opportunities for common collection activities involving Unemployment Compensation and Workers' Compensation Divisions.

While the Bureau of Employment Programs disagrees with this recommendation, we agree with the concept of closer coordination between the Unemployment Compensation Division and the Legal Division. A more coordinated effort to recover delinquent taxes can be accomplished within the existing organizational structure with the addition of the previously mentioned attorney and through re-engineering concepts applicable to streamlining work flow.

PERD Comments:

The Bureau has demonstrated that appropriate steps were taken using other methods of addressing the issue. The important point is that the degree of coordination between the two divisions is being scrutinized, and steps toward smoother exchange of information are being taken.

ISSUE AREA 2: The State Provided \$1.3 Million In Tax Refunds To Delinquent Employers During The Last 20 Months

Recommendation 4

The Legislature should consider amending §21A-5-16 to specifically state that the Unemployment Compensation Division can cooperate with the Department of Tax and Revenue to intercept any tax refund check of any employer who is delinquent in the unemployment taxes.

Agency Response:

As a result of and subsequent to the previous audit report, we have implemented additional procedures to levy against tax refund checks. As a result of negotiations with the Department of Tax and Revenue, our arrangements and procedures have been strengthened. In light of the additional strengthened agreement, the need for code change is minimized. We may have adequate authority under the Unemployment Compensation Law to obtain the desired results.

For your information, as a result of the recent agreement with the Department of Tax and Revenue, during the months of July and August, we have intercepted refund checks totalling \$29,202.10. These checks will be reissued to the Bureau during the months of September and October.

Not as a result of, but subsequent to the above recommendation, the Unemployment Compensation Division, during this quarter, instituted a procedure with the Division of Labor whereby all contractors which apply for a current Contractor's License must be in compliance with the Unemployment Compensation Division before the renewal is issued. Currently we have brought 33 employers into compliance, either through complete payment or a valid payment plan, with a minimum of 25% down payment. \$31,301.00 in contributions have been collected as a result of these recently implemented procedures.

PERD Comments:

The Unemployment Compensation Division has demonstrated that the desired results can be achieved without amending the existing statute. PERD commends the Division for taking the step of making the agreement with the Division of Labor. This demonstrates a genuine desire on the Division's part to address this issue.

Recommendation 5

The Unemployment Compensation Division should issue emergency regulations to allow the interception of tax refunds of delinquent employers, immediately upon any unemployment tax delinquency until the Legislature can amend §21A-5-16.

Agency Response:

Please refer to our response in Area 2, Recommendation 4.

PERD Comments:

Again, if the results can be achieved without the emergency regulations, then PERD is satisfied. However, if any future complications arise, the Division should be open to the idea of regulations.

Recommendation 6

The Legislature should consider amending state law to allow the State Auditor's office and the Division of Purchasing to withhold from any company or individual conducting business with the state and is delinquent in unemployment taxes such amount as would offset the delinquent amount and the interest or fine accrued.

Agency Response:

The Bureau has no objection to Recommendation 6 and would support the Legislature's consideration of amending state law to allow the State Auditor's Office and the Division of Purchasing to withhold from any company or individual conducting business with the state and is delinquent in unemployment taxes such amount as would offset the delinquent amount and the interest or fine accrued.

PERD Comment:

PERD and Legislative Services are preparing a draft for this proposed legislation. It will be presented to the full Joint Committee on Government Operations at the October 1995 interim meeting.

ISSUE AREA 3: Appeals Reversal Rate May be Reduced by Using a Precedent System of Board of Review Decisions

Recommendation 7

The Bureau should consider requiring the Board of Review to create a set of precedent decisions for West Virginia. By referring to similar cases, Deputies and ALJs would have foreknowledge of past decisions made by ALJs and the Board of Review. Determinations would then be made according to precedents, and different interpretations would be reduced. The effects would be more uniform and consistent decisions, and a smaller number of cases being appealed. A lower number of individuals would be without unemployment benefits as they wait for a decision, and there would be cost savings associated with a lower appeals workload.

Agency Response:

The Unemployment Compensation Division's deputies have a Policy and Precedent Manual to serve as a guide for their decisions. This manual is updated periodically due to state law changes, Supreme Court decisions and newly introduced federal procedures. This manual is utilized statewide to facilitate the Deputy's decision making process and to make them as consistent as practical. The Board of Review was created by state law as a separate decision making body. The Board of Review's staff and the Unemployment Compensation Division's staff are comprised of individuals with differing backgrounds and education levels. These two entities independently conduct the decision making processes, thus serving as a "check and balance" system and providing claimants/employers with due process. The development of one manual based solely on the ALJ's and Board of Review's decisions could have the adverse effect of decreasing the check and balance system created by state law. The Unemployment Compensation Division does not consider any decision rendered by an ALJ, Deputy or Board member as a precedent setting decision. Therefore, the Bureau has decided not to pursue this recommendation.

PERD Comments:

The recommendation was not to establish such a system of precedent manuals, but to study the possibility. This recommendation was made after learning of the precedent code which is used in the State of Connecticut. PERD realized at the time that there could be any number of reasons why such a system might not work in West Virginia. This is why the recommendation was for a feasibility study, not for the implementation of the program. If the Division feels that this kind of a system is not feasible, then PERD respects their decision.

Recommendation 8

The ALJs and Deputies should meet periodically to review recently reversed cases of each Deputy and explain their respective opinions. More communication between Deputies and ALJs could result in greater consistency in decisions and lower reversal rates.

Agency Response:

The Unemployment Compensation Division has addressed this recommendation at a higher management level than recommended for a specific reason. In order to have open communication between ALJs and Deputies, our staff regularly meets at the management level. The appropriate staff, ALJs and Deputies attend, and in the course of the proceedings present and share information at the counterparts' meetings. I feel this policy has provided, and will continue to provide more consistent decisions than a meeting between each individual ALJ and Deputy.

The UC Division has procedures in place in which we review all decisions resulting from appeals, as well as Deputy's decisions. All decisions which are inconsistent with our policy are either appealed, returned for a redetermination, or discussed with the appropriate party (such as the Chief ALJ). If appropriate, a change in policy is implemented. We have discussed several decisions with the Chief ALJ since the audit recommendations were issued.

PERD Comments:

PERD is satisfied with the Division's actions. It was merely intended to suggest a higher degree of communication between the Division and the appellate entities. This seems to have been addressed.

ISSUE AREA 4: The Division Met or Exceeded Federal Standards

Agency Response:

We appreciate the Legislative Performance Review highlighting our outstanding performance on federal standards. Since the Legislative Review was completed, we received the Fiscal Year (FY) 1995 Quality Appraisal and Quality Control results (see attachments). These results indicate our operation is continuing to improve. The FY 1995 Quality Appraisal results show we met 24 out of 26 federal standards compared to 19 out of 26 in FY 1994. Both the Contributions (Tax) area and Combined Wage Claim area continue to be ranked as one of the best in the nation. The Deputy's (nonmonetary) determinations process was ranked in the top ten in the nation in all seven measurements during FY 1995. Furthermore, the current year's data indicates that we are meeting all 26 federal measurements. Quality Control's proper payment rate for our state was 98.1% for calendar year 1994, which was the highest in the nation.

PERD Comments:

PERD congratulates the Unemployment Compensation Division for its continued excellence in meeting federal standards. The advances the Division is making in the delinquency arena, combined with the already outstanding performance that the Division has been achieving in other categories could undoubtedly make the West Virginia Unemployment Compensation program one of the premiere programs in the country.

APPENDIX A

FISCAL YEAR 1995

PERFORMANCE AREA	FEDERAL DESIRED LEVEL OF ACHIEVEMENT	PERCENTAGE ACCOMPLISHED	REGIONAL RANKING (OF 6)	NATIONAL RANKING (OF 53)
INITIAL CLAIMS PROMPTNESS				
INTRA IC WITHIN 14 DAYS	87%	93.0%	5	27
INTRA IC WITHIN 35 DAYS	93%	98.3%	2	14
INTER IC WITHIN 14 DAYS	70%	81.6%	3	17
INTER IC WITHIN 35 DAYS	78%	96.4%	1	4
UCFE WITHIN 14 DAYS	70%	91.9%	2	9
UCFE WITHIN 35 DAYS	78%	97.4%	2	13
UCX WITHIN 14 DAYS	87%	96.1%	2	7
UCX WITHIN 35 DAYS	93%	99.5%	2	4
BENEFIT PAYMENT CONTROL				
BPC NON-FRAUD RECOVERY	55%	52.6%	3	28
BPC FRAUD RECOVERY	55%	41.2%	3	35
NONMONETARY DETERMINATIONS				
INTRA SEPARATION PERFORMANCE	75%	90.0%	2	6
INTRA NONSEPARATION PERFORMANCE	80%	98.3%	1	2
INTER SEPARATION PERFORMANCE	NONE	90.0%	2	4
INTER NONSEPARATION PERFORMANCE	NONE	92.0%	2	4
UCFE CLAIMS	NONE	92.0%	2	4
INTRA PROMPTNESS	80%	90.4%	1	8
INTER PROMPTNESS	NONE	90.0%	1	3
COMBINED WAGE CLAIMS				
INTRA INITIAL CWC PROMPTNESS				
- WITHIN 14 DAYS	NONE	92.0%	2	6
- WITHIN 35 DAYS	NONE	97.7%	1	6
WAGE TRANSFER PROMPTNESS	75%	100.0%	1	1
BILLING PROMPTNESS	NONE	100.0%	1	1
REIMBURSEMENT PROMPTNESS	NONE	100.0%	1	1
APPEALS				
LOWER AUTHORITY WITHIN 30 DAYS	60%	67.7%	4	33
LOWER AUTHORITY WITHIN 45 DAYS	80%	86.9%	5	37
HIGHER AUTHORITY WITHIN 45 DAYS	40%	63.7%	2	27
HIGHER AUTHORITY WITHIN 75 DAYS	80%	86.0%	2	32
PERFORMANCE	80%	80.0%	5	15
CONTRIBUTIONS				
STATUS DETERMINATION PROMPTNESS	80%	90.7%	1	9
PENETRATION OF EMPLOYERS AUDITED	2%	2.7%	1	14
PENETRATION OF LARGE EMPLOYERS	1%	4.5%	1	13
FIELD AUDIT PERFORMANCE	NONE	100.0%	1	1
REPORTS DELINQUENCY	95%	97.9%	1	11
COLLECTIONS WITHIN 150 DAYS	75%	92.8%	1	11
CASH MANAGEMENT				
EMPLOYER ACCOUNTS PROMPTNESS	90%	100.0%	1	1
<i>(DEPOSITS WITHIN 3 DAYS)</i>				
CLEARING ACCOUNT TRANSFERS	2 DAYS	1.7	5	27
<i>(MONEY TRANSFERRED)</i>				

*HIGHLIGHTED PERCENTAGES DENOTE EITHER A RANKING OF TEN OR ABOVE ON A NATIONAL LEVEL OR A RANK OF ONE IN THE REGIONAL LEVEL OR BOTH.

**1994 Quality Control Percentage Rate of Accurate Payments
By State as Published By The U. S. Department of Labor**

Alabama	89.8	Alaska	93.4
Arizona	85.1	Arkansas	91.1
California	93.9	Colorado	90.0
Connecticut	96.6 (#4)	Delaware	87.6
D. C.	86.2	Florida	91.2
Georgia	93.1	Hawaii	97.1 (#3)
Idaho	86.0	Illinois	81.6
Indiana	82.5	Iowa	94.4
Kansas	91.4	Kentucky	95.2
Louisiana	83.3	Maine	89.6
Maryland	87.2	Massachusetts	95.6
Michigan	84.2	Minnesota	87.3
Mississippi	89.9	Missouri	94.3
Montana	92.8	Nebraska	89.6
Nevada	85.5	New Hampshire	82.9
New Jersey	91.0	New Mexico	95.6
New York	95.2	North Carolina	86.3
North Dakota	97.3 (#2)	Ohio	83.9
Oklahoma	95.0	Oregon	92.5
Pennsylvania	95.5	Puerto Rico	91.8
Rhode Island	94.5	South Carolina	90.5
South Dakota	92.4	Tennessee	95.9 (#5)
Texas	92.6	Utah	91.8
Vermont	93.9	Virginia	88.3
Washington	90.0	<u>WEST VIRGINIA</u>	<u>98.1 (#1)</u>
Wisconsin	89.2	Wyoming	90.3

APPENDIX B

List of Delinquent by \$100,000 or More

Name	Amount July 95	Current Amount	Qtrs. July	Current Quarters	Comment
War Eagle Construction	\$539,241.94	\$93,592.51	6	4	Chapter 7 bankruptcy
Beaumont Company	\$357,738.46	\$357,738.48	20	20	Judgements and executions obtained
Maben Energy Corp.	\$195,829.77	\$212,372.26	8	9	Chapter 11 bankruptcy
E. S. M. Corp.	\$151,988.02	\$151,988.02	15	15	Judgements and executions obtained
Nowell Specialty Chemicals	\$151,514.29	\$158,744.56	24	25	Chapter 11 bankruptcy
Med West Inc.	\$147,074.14	\$149,052.47	17	18	Chapter 11 converted to Chapter 7
Stoney Coal Co.	\$143,633.21	\$143,633.21	7	7	Chapter 11 bankruptcy
Electric Equipment Co.	\$129,405.49	\$143,633.21	6	7	Chapter 11 bankruptcy
Green Mountain Energy	\$117,819.38	\$117,819.38	7	7	Chapter 11 bankruptcy
*Medical Emergency Transport	\$114,005.71	\$114,005.71	17	17	Judgements and executions obtained
*Wayne County Publications	\$113,035.70	\$113,035.70	17	17	Judgements obtained
Totals	\$2,161,286.11	\$1,746,979.65	144	146	

*indicates has had numerous payment plans

APPENDIX C

List of Delinquent Accounts by Seven Years or More

Name	Amount July 95	Current Amount	Qtrs. July	Current Qtrs.	Comment
Abishi Cunningham	\$8,796.20	\$8,857.56	46	47	Has had civil action filed dating to 1982
*Topeg Corporation	\$18,295.66	\$18,295.66	44	45	Has not yet submitted latest report
PCO Management	\$9,268.86	\$9,265.36	41	41	Chapter 11 bankruptcy
*Nathan A. Hicks	\$12,256.96	\$12,623.12	41	42	Tax liens filed
Anthony J. Sparacino	\$5,916.51	\$6,133.03	37	38	Filed answers in civil action
Al Hunt (dba)	\$21,464.05	\$21,464.05	35	35	All delinquent quarters are prior to 6-30-85
*Bob Rutledge	\$22,611.21	\$24,080.98	34	35	Chapter 7 bankruptcy
Jack P. McDonald	\$26,636.83	\$31,933.38	31	33	Chapter 13 bankruptcy
*Cardinal Gardens Inc.	\$9,336.56	\$9,336.56	29	29	Judgements and executions obtained
*Mountain State Vending Co.	\$13,909.24	\$15,212.90	28	29	Judgements obtained
*Geohn, Inc.	\$63,436.80	\$63,436.80	28	28	Delinquent quarters are prior to 12-31-88
Totals	\$211,928.88	\$221,639.40	394	402	

* indicates has had numerous payment plans

ISSUE AREA 1: Employers Are Currently \$19 Million Delinquent In Unemployment Tax Payments

Recommendation 1

The PERD recommends that the Bureau propose legislative amendments to Chapter 21A, Article 5, Section 4 to provide for specific penalties for failure to remit unemployment taxes due on a quarterly basis. This would eliminate the uncertainty of whether penalties provided under 21A-10-10 apply to the delinquency of unemployment taxes. The legal section should then use this as enforcement power and criminal proceedings should be brought against delinquent employers.

Agency Response:

The Bureau concurs with this recommendation and will propose suggested legislative amendments.

PERD Comment:

As Appendix C shows the problem of continued delinquency should be addressed through legislation. Ideas for consideration could include the denial of professional licenses for failure to pay unemployment taxes. This method appears to be working with contractors and should be explored in other areas as well.

Recommendation 2

The legal section should begin a more vigorous approach to collecting delinquent unemployment taxes through a greater use of the legal provisions in §21A-5-16. The PERD recommends the Bureau propose legislative amendments to §21A-5-16(3) that would specify state tax refunds as personal property. It is further recommended that legislative rules be promulgated to establish a state tax refund intercept mechanism similar to the one used by the Child Advocate Office to ensure a constitutionally sound procedure. The PERD also recommends promulgating rules for the unemployment tax collection process similar to those in effect for Workers' Compensation.

Agency Response:

The Bureau concurs with the concept of defining tax refunds as personal property but questions the appropriateness of utilizing Chapter 21A as the vehicle to change that definition. It is our opinion that Chapter 11 of the State Code would be more appropriate to amend.

PERD Comments:

PERD agrees with the Bureau's opinion.

Recommendation 3

The Legal Division of the Bureau has separate sections dealing with Unemployment Compensation issues and with Workers' Compensation issues. The PERD recommends that the section of the Legal Division which deals with unemployment accounts be placed directly under the jurisdiction of the Unemployment Compensation Division. Since the primary function of this section of the Legal Division is integral to the collection process, the manager of collections is best suited to oversee the legal aspects of the collection of delinquent taxes. This reorganization would provide for a more coordinated effort to recover delinquent taxes.

Agency Response:

The Bureau disagrees with this recommendation as stated.

As stated in our previous response, we believe that the assignment of the Administrative staff should be addressed utilizing policy discretion. Also, in our previous response, we were actively soliciting an additional attorney for the various functions of the Bureau of Employment Programs including the Unemployment Compensation Division. At that time we had hired an additional attorney and she had since resigned to take another position in the private sector. Since that time, we have hired, as of November 16, 1995, a new attorney who will work primarily in the Federal Programs area. Additionally, a paralegal has been hired that will work in the collections, Bankruptcies, etc. areas of our program. A part of this new attorney's responsibilities will be the exploration of opportunities for common collection activities involving Unemployment Compensation and Worker's Compensation Divisions. Partial implementation of this concept has been initiated with the reorganization of the bankruptcy workload assigned to one attorney who will handle the processes for both the Unemployment Compensation and Worker's Compensation Divisions. It is believed that this reassignment of workload will expedite that process.

While the Bureau of Employment Programs disagrees with this recommendation, we agree with the concept of closer coordination between the Unemployment Compensation Division and the Legal Division. A more coordinated effort to recover delinquent taxes can be accomplished within the existing organizational structure with the addition of the previously mentioned attorney and through re-engineering concepts applicable to streamlining work flow.

PERD Comments:

The Bureau has demonstrated that appropriate steps were taken using other methods of addressing the issue. The important point is that the degree of coordination between the two divisions is being scrutinized, and steps toward smoother exchange of information are being taken.

ISSUE AREA 2: The State Provided \$1.3 Million In Tax Refunds To Delinquent Employers During The Last 20 Months

Recommendation 4

The Legislature should consider amending §21A-5-16 to specifically state that the Unemployment Compensation Division can cooperate with the Department of Tax and Revenue to intercept any tax refund check of any employer who is delinquent in the unemployment taxes.

Agency Response:

As a result of and subsequent to the previous audit report, we have implemented additional procedures to levy against tax refund checks. As a result of negotiations with the Department of Tax and Revenue, our arrangements and procedures have been strengthened. In light of the additional strengthened agreement, the need for code change is minimized. We may have adequate authority under the Unemployment Compensation Law to obtain the desired results.

For your information, as a result of the recent agreement with the Department of Tax and Revenue,, during the months of July and August, we have intercepted refund checks totalling \$29,436.22. These checks will be reissued to the Bureau during the months of September and October.

Not as a result of, but subsequent to the above recommendation, the Unemployment Compensation Division, during this quarter, instituted a procedure with the Division of Labor whereby all contractors which apply for a current Contractor's License must be in compliance with the Unemployment Compensation Division before the renewal is issued. Currently we have brought 147 employers into compliance, either through complete payment or a valid payment plan, with a minimum of 25% down payment. \$260,573.41 in contributions have been collected as a result of these recently implemented procedures.

PERD Comments:

The Unemployment Compensation Division has demonstrated that the desired results can be achieved without amending the existing statute. PERD commends the Division for taking the step of making the agreement with the Division of Labor. This demonstrates a genuine desire on the Division's part to address this issue.

Recommendation 5

The Unemployment Compensation Division should issue emergency regulations to allow the interception of tax refunds of delinquent employers, immediately upon any unemployment tax delinquency until the Legislature can amend §21A-5-16.

Agency Response:

Please refer to our response in Area 2, Recommendation 4.

PERD Comments:

Again, if the results can be achieved without the emergency regulations, then PERD is satisfied. However, if any future complications arise, the Division should be open to the idea of regulations.

Recommendation 6

The Legislature should consider amending state law to allow the State Auditor's office and the Division of Purchasing to withhold from any company or individual conducting business with the state and is delinquent in unemployment taxes such amount as would offset the delinquent amount and the interest or fine accrued.

Agency Response:

The Bureau has no objection to Recommendation 6 and would support the Legislature's consideration of amending state law to allow the State Auditor's Office and the Division of Purchasing to withhold from any company or individual conducting business with the state and is delinquent in unemployment taxes such amount as would offset the delinquent amount and the interest or fine accrued.

PERD Comment:

PERD and Legislative Services are preparing a draft for this proposed legislation. It will be presented to the full Joint Committee on Government Operations at the October 1995 interim meeting.

ISSUE AREA 3: Appeals Reversal Rate May be Reduced by Using a Precedent System of Board of Review Decisions

Recommendation 7

The Bureau should consider requiring the Board of Review to create a set of precedent decisions for West Virginia. By referring to similar cases, Deputies and ALJs would have foreknowledge of past decisions made by ALJs and the Board of Review. Determinations would then be made according to precedents, and different interpretations would be reduced. The effects would be more uniform and consistent decisions, and a smaller number of cases being appealed. A lower number of individuals would be without unemployment benefits as they wait for a decision, and there would be cost savings associated with a lower appeals workload.

Agency Response:

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PERD Comments:

The recommendation was not to establish such a system of precedent manuals, but to study the possibility. This recommendation was made after learning of the precedent code which is used in the State of Connecticut. PERD realized at the time that there could be any number of reasons why such a system might not work in West Virginia. This is why the recommendation was for a feasibility study, not for the implementation of the program. If the Division feels that this kind of a system is not feasible, then PERD respects their decision.

Recommendation 8

The ALJs and Deputies should meet periodically to review recently reversed cases of each Deputy and explain their respective opinions. More communication between Deputies and ALJs could result in greater consistency in decisions and lower reversal rates.

Agency Response:

The Unemployment Compensation Division has addressed this recommendation at a higher management level than recommended for a specific reason. In order to have open communication between ALJs and Deputies, our staff regularly meets at the management level. The appropriate staff, ALJs and Deputies attend, and in the course of the proceedings present and share information at the counterparts' meetings. I feel this policy has provided, and will continue to provide more consistent decisions than a meeting between each individual ALJ and Deputy.

The UC Division has procedures in place in which we review all decisions resulting from appeals, as well as Deputy's decisions. All decisions which are inconsistent with our policy are either appealed, returned for a redetermination, or discussed with the appropriate party (such as the Chief ALJ). If appropriate, a change in policy is implemented. We have discussed several decisions with the Chief ALJ since the audit recommendations were issued.

PERD Comments:

PERD is satisfied with the Division's actions. It was merely intended to suggest a higher degree of communication between the Division and the appellate entities. This seems to have been addressed.

ISSUE AREA 4: The Division Met or Exceeded Federal Standards

Agency Response:

We appreciate the Legislative Performance Review highlighting our outstanding performance on federal standards. Since the Legislative Review was completed, we received the Fiscal Year (FY) 1995 Quality Appraisal and Quality Control results (see attachments). These results indicate our operation is continuing to improve. The FY 1995 Quality Appraisal results show we met 24 out of 26 federal standards compared to 19 out of 26 in FY 1994. Both the Contributions (Tax) area and Combined Wage Claim area continue to be ranked as one of the best in the nation. The Deputy's (nonmonetary) determinations process was ranked in the top ten in the nation in all seven measurements during FY 1995. Furthermore, the current year's data indicates that we are meeting all 26 federal measurements. Quality Control's proper payment rate for our state was 98.1% for calendar year 1994, which was the highest in the nation.

PERD Comments:

PERD congratulates the Unemployment Compensation Division for its continued excellence in meeting federal standards. The advances the Division is making in the delinquency arena, combined with the already outstanding performance that the Division has been achieving in other categories could undoubtedly make the West Virginia Unemployment Compensation program one of the premiere programs in the country.

APPENDIX A

FISCAL YEAR 1995

PERFORMANCE AREA	FEDERAL DESIRED LEVEL OF ACHIEVEMENT	PERCENTAGE ACCOMPLISHED	REGIONAL RANKING (OF 6)	NATIONAL RANKING (OF 53)
INITIAL CLAIMS PROMPTNESS				
INTRA IC WITHIN 14 DAYS	87%	93.0%	5	27
INTRA IC WITHIN 35 DAYS	93%	98.3%	2	14
INTER IC WITHIN 14 DAYS	70%	81.6%	3	17
INTER IC WITHIN 35 DAYS	78%	96.4%	1	4
UCFE WITHIN 14 DAYS	70%	91.9%	2	9
UCFE WITHIN 35 DAYS	78%	97.4%	2	13
UCX WITHIN 14 DAYS	87%	96.1%	2	7
UCX WITHIN 35 DAYS	93%	99.5%	2	4
BENEFIT PAYMENT CONTROL				
BPC NON-FRAUD RECOVERY	55%	52.6%	3	28
BPC FRAUD RECOVERY	55%	41.2%	3	35
NONMONETARY DETERMINATIONS				
INTRA SEPARATION PERFORMANCE	75%	90.0%	2	6
INTRA NONSEPARATION PERFORMANCE	80%	98.3%	1	2
INTER SEPARATION PERFORMANCE	NONE	90.0%	2	4
INTER NONSEPARATION PERFORMANCE	NONE	92.0%	2	4
UCFE CLAIMS	NONE	92.0%	2	4
INTRA PROMPTNESS	80%	90.4%	1	8
INTER PROMPTNESS	NONE	90.0%	1	3
COMBINED WAGE CLAIMS				
INTRA INITIAL CWC PROMPTNESS				
- WITHIN 14 DAYS	NONE	92.0%	2	6
- WITHIN 35 DAYS	NONE	97.7%	1	6
WAGE TRANSFER PROMPTNESS	75%	100.0%	1	1
BILLING PROMPTNESS	NONE	100.0%	1	1
REIMBURSEMENT PROMPTNESS	NONE	100.0%	1	1
APPEALS				
LOWER AUTHORITY WITHIN 30 DAYS	60%	67.7%	4	33
LOWER AUTHORITY WITHIN 45 DAYS	80%	86.9%	5	37
HIGHER AUTHORITY WITHIN 45 DAYS	40%	63.7%	2	27
HIGHER AUTHORITY WITHIN 75 DAYS	80%	86.0%	2	32
PERFORMANCE	80%	80.0%	5	15
CONTRIBUTIONS				
STATUS DETERMINATION PROMPTNESS	80%	90.7%	1	9
PENETRATION OF EMPLOYERS AUDITED	2%	2.7%	1	14
PENETRATION OF LARGE EMPLOYERS	1%	4.5%	1	13
FIELD AUDIT PERFORMANCE	NONE	100.0%	1	1
REPORTS DELINQUENCY	95%	97.9%	1	11
COLLECTIONS WITHIN 150 DAYS	75%	92.8%	1	11
CASH MANAGEMENT				
EMPLOYER ACCOUNTS PROMPTNESS	90%	100.0%	1	1
<i>(DEPOSITS WITHIN 3 DAYS)</i>				
CLEARING ACCOUNT TRANSFERS	2 DAYS	1.7	5	27
<i>(MONEY TRANSFERRED)</i>				

*HIGHLIGHTED PERCENTAGES DENOTE EITHER A RANKING OF TEN OR ABOVE ON A NATIONAL LEVEL OR A RANK OF ONE IN THE REGIONAL LEVEL OR BOTH.

**1994 Quality Control Percentage Rate of Accurate Payments
By State as Published By The U. S. Department of Labor**

Alabama	89.8	Alaska	93.4
Arizona	85.1	Arkansas	91.1
California	93.9	Colorado	90.0
Connecticut	96.6 (#4)	Delaware	87.6
D. C.	86.2	Florida	91.2
Georgia	93.1	Hawaii	97.1 (#3)
Idaho	86.0	Illinois	81.6
Indiana	82.5	Iowa	94.4
Kansas	91.4	Kentucky	95.2
Louisiana	83.3	Maine	89.6
Maryland	87.2	Massachusetts	95.6
Michigan	84.2	Minnesota	87.3
Mississippi	89.9	Missouri	94.3
Montana	92.8	Nebraska	89.6
Nevada	85.5	New Hampshire	82.9
New Jersey	91.0	New Mexico	95.6
New York	95.2	North Carolina	86.3
North Dakota	97.3 (#2)	Ohio	83.9
Oklahoma	95.0	Oregon	92.5
Pennsylvania	95.5	Puerto Rico	91.8
Rhode Island	94.5	South Carolina	90.5
South Dakota	92.4	Tennessee	95.9 (#5)
Texas	92.6	Utah	91.8
Vermont	93.9	Virginia	88.3
Washington	90.0	<u>WEST VIRGINIA</u>	<u>98.1 (#1)</u>
Wisconsin	89.2	Wyoming	90.3

APPENDIX B

List of Delinquent by \$100,000 or More

Name	Amount July 95	Current Amount	Qtrs. July	Current Quarters	Comment
Maben Energy Corp.	\$195,829.77	\$223,773.86	8	9	Chapter 11 bankruptcy
Nowell Specialty Chemicals	\$151,514.29	\$162,620.57	24	26	Chapter 11 bankruptcy
Stoney Coal Co.	\$143,633.21	\$143,633.21	7	7	Chapter 11 bankruptcy
Electric Equipment Co.	\$129,405.49	\$129,417.56	6	6	Chapter 11 bankruptcy
Green Mountain Energy	\$117,819.38	\$117,819.38	7	7	Chapter 11 bankruptcy
*Medical Emergency Transport	\$114,005.71	\$114,005.71	17	17	Judgements and executions obtained
*Wayne County Publications	\$113,035.70	\$123,425.43	17	19	Judgements obtained
Totals	\$965,243.55	\$1,014,695.72	86	91	

*indicates has had numerous payment plans

APPENDIX C

List of Delinquent Accounts by Seven Years or More

Name	Amount July 95	Current Amount	Qtrs. July	Current Qtrs.	Comment
Abishi Cunningham	\$8,796.20	\$8,959.56	46	48	Has had civil action filed dating to 1982
*Topeg Corporation	\$18,295.66	\$18,557.70	44	45	Has not yet submitted latest report
PCO Management	\$9,268.86	\$9,179.25	41	40	Chapter 11 bankruptcy
*Nathan A. Hicks	\$12,256.96	\$12,594.77	41	42	Tax liens filed
Al Hurt (dba)	\$21,464.05	\$21,464.05	35	35	All delinquent quarters are prior to 6-30-85
*Bob Rutledge	\$22,611.21	\$25,624.23	34	36	Chapter 7 bankruptcy
Jack P. McDonald	\$26,636.83	\$35,251.71	31	35	Chapter 13 bankruptcy
*Cardinal Gardens Inc.	\$9,336.56	\$9,336.56	29	29	Judgements and executions obtained
*Mountain State Vending Co.	\$13,909.24	\$15,163.55	28	29	Judgements obtained
*Geohn, Inc.	\$63,436.80	\$63,436.80	28	28	Delinquent quarters are prior to 12-31-88
Robox, Inc., ta	\$8,401.23	\$8,717.13	27	30	Judgements and executions obtained
West Virginia Laboratories	\$31,975.43	\$33,405.52	27	29	Tax liens and judgements
Jerry O'Dell, dba	\$7,001.33	\$7,885.72	26	28	Chapter 11 Bankruptcy
Totals	\$253,390.36	\$269,576.55	437	453	

* indicates has had numerous payment plans