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PERFORMANCE REVIEW

WORKFORCE WEST VIRGINIA UNEMPLOYMENT COMPENSATION

AUDIT OVERVIEW

The Unemployment Tax Schedules That Are Tied to the Trust Fund Balance Raise Tax Rates on Only a Portion of the Employers When the Trust Fund Is Declining, Which Does not Raise Adequate Revenue to Support a Healthy Trust Fund During Recessions

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EXECUTIVE SUMMARY

The West Virginia Unemployment Compensation Trust Fund (Trust Fund) has been on a downward trend since April 2008. During the 2009 legislative session, the Legislature made significant legislative changes to the unemployment insurance system to avert the projected insolvency of the Trust Fund. The statutory changes were successful in keeping the Trust Fund solvent through calendar year 2010. However, the most recent projections show the Trust Fund balance becoming insolvent in March 2011 by over $2 million, and having a balance of only $9.7 million by December 2011. Although structural changes to the unemployment insurance system were made in 2009, the system still has major structural weaknesses that are contributing to the current situation. These structural weaknesses need to be addressed in order to provide for a healthy unemployment insurance system, and to alleviate the current financial problems.

The State's unemployment insurance system has two major structural weaknesses that inhibit achieving a healthy Trust Fund balance. The tax rates that are tied to the Trust Fund balance do not increase on all employers and the experience rating system imposes the highest tax rate on a relatively low percentage of excess charges. These structural weaknesses limit the growth of unemployment tax revenue, they create significant inequities among employers, and they create disincentives for employers to control their excess charges.

Report Highlights:

- The unemployment tax schedules that are tied to the Trust Fund balance do not raise adequate funds during declining economic conditions.
- As the Trust Fund balance drops during slow economic conditions, unemployment compensation tax rates increase on all employers **except debit employers who historically have more charged against the Trust Fund in unemployment benefit claims than they pay in unemployment taxes.** This limits the growth in unemployment tax revenue and it creates an inequity because debit employers place the most pressure on the Trust Fund, but do not bear any additional financial burden to help alleviate the financial difficulty during recessions.
- Most states increase unemployment taxes on all employers when Trust Fund balances are declining, and more so on debit employers than on non-debit employers.
- The State's unemployment insurance experience rating system assigns the highest tax rate to a relatively low percentage of excess charges. This creates significant inequity in the system and a disincentive for employers to control their excess charges.
- Most states impose a minimum tax rate even in the most favorable economic circumstances, but West Virginia does not.
- Currently, the Unemployment Compensation Division has not been utilizing an Employer Violator System that would prohibit violators from maintaining business licenses when unemployment compensation taxes are not paid.

Recommendations

1. The Legislature should consider amending the unemployment tax schedules that are tied to the trust fund balance so that the unemployment tax increases on all employers.

2. The Legislature should consider raising the tax rates on debit employers at a higher tax rate differential than non-debit employers.

3. The Legislative Auditor recommends that the UC Division work closely with the Tax Department in order to utilize the Employer Violator System requirements of West Virginia Code and continue to revoke business licenses for lack of payment.

4. The Legislative Auditor recommends that if the Legislature increases the unemployment tax rates as this report proposes, it should consider assigning the highest tax rate to a higher ratio of excess charges to average annual payroll than the current 10 percent.

5. The Legislative Auditor recommends that the highest tax rate be assigned to at least a 25 percent ratio of excess charges to average annual payroll.

OBJECTIVE, SCOPE & METHODOLOGY

This performance review of the Unemployment Compensation Division was requested by the Legislative Auditor due to the recent projections of trust fund insolvency. Chapter 4, Article 2, Section 5 of the West Virginia Code authorizes this review.

Objective

The purpose of this audit is to evaluate the policies and procedures of the Unemployment Compensation Division and recent legislation in order to address the long-term solvency of the Unemployment Compensation Trust Fund.

Scope

The scope of this audit is fiscal years 2006 to 2010.

Methodology

Information compiled in this report has been acquired through communication with and documentation from the Unemployment Compensation Division. Documents obtained from the Division included pertinent financial information, debit employer information, delinquent employer account information, and trust fund projections. Information gathered from other state agencies included the West Virginia State Tax Department. Information was also obtained from previous reports of the Legislative Auditor. Information concerning national and other states' unemployment information was obtained from the United States Department of Labor. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

ISSUE 1

Issue 1: The Unemployment Tax Schedules That Are Tied to the Trust Fund Balance Raise Tax Rates on Only a Portion of Employers When the Trust Fund Is Declining, Which Does not Raise Adequate Revenue to Support a Healthy Trust Fund During Recessions.

Issue Summary

The recent national recession has put a significant toll on states' unemployment trust fund balances. There are currently 32 states that have borrowed a total of $39.1 billion from the Federal Government in order to supplement insolvent unemployment compensation trust funds. Only 13 states are projected to remain solvent in 2010. West Virginia's Unemployment Compensation Division has projected that the State's Unemployment Trust Fund (Trust Fund) will reach insolvency by March 2011.

Debit employers are those whose unemployment benefit charges exceed their contributions into the Trust Fund.

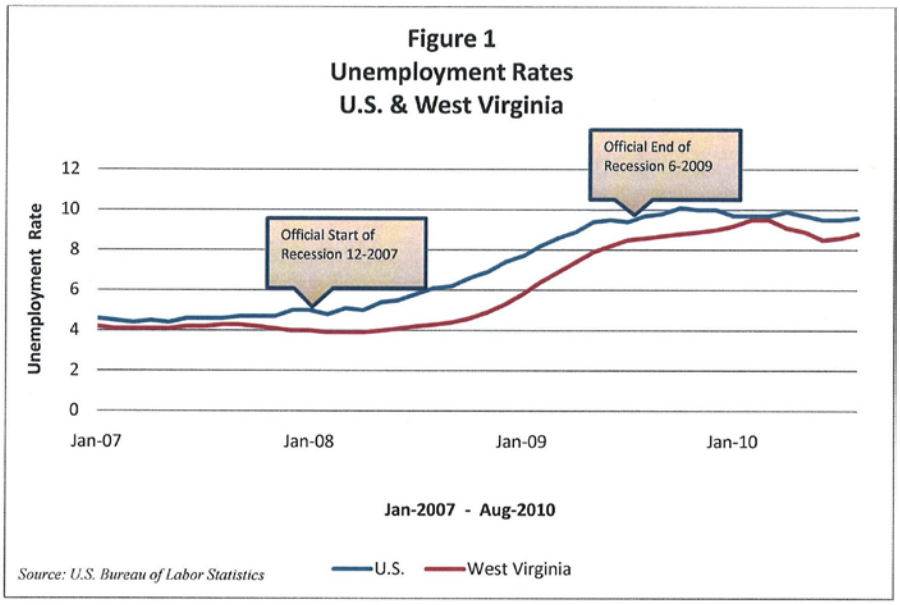
Although the Legislature made significant structural changes to the unemployment insurance system during the 2009 legislative session that have kept the Trust Fund solvent through 2010, there are still structural weaknesses that inhibit the Trust Fund from maintaining adequate balances during an economic downturn. The unemployment tax schedules that are tied to the Trust Fund balance increase taxes on employers when the Trust Fund declines. However, the tax rates increase only on non-debit employers. **Debit employers' tax rates do not change when the trust fund is declining.** Debit employers are those whose unemployment benefit charges exceed their contributions into the Trust Fund. Raising unemployment taxes only on non-debit employers is inequitable because debit employers place the highest amount of pressure on the Trust Fund. Moreover, when the unemployment tax system increases taxes on only a portion of employers, it will generate an inadequate amount of revenue to sustain a healthy unemployment Trust Fund during declining economic conditions. On average, states increase their unemployment tax rates on all employers when the trust fund balances are declining. The Legislature should consider amending the unemployment tax schedules that are tied to the Trust Fund balance to raise the tax rate on all employers.

On average, states increase their unemployment tax rates on all employers when the trust fund balances are declining.

Current State of the Economy

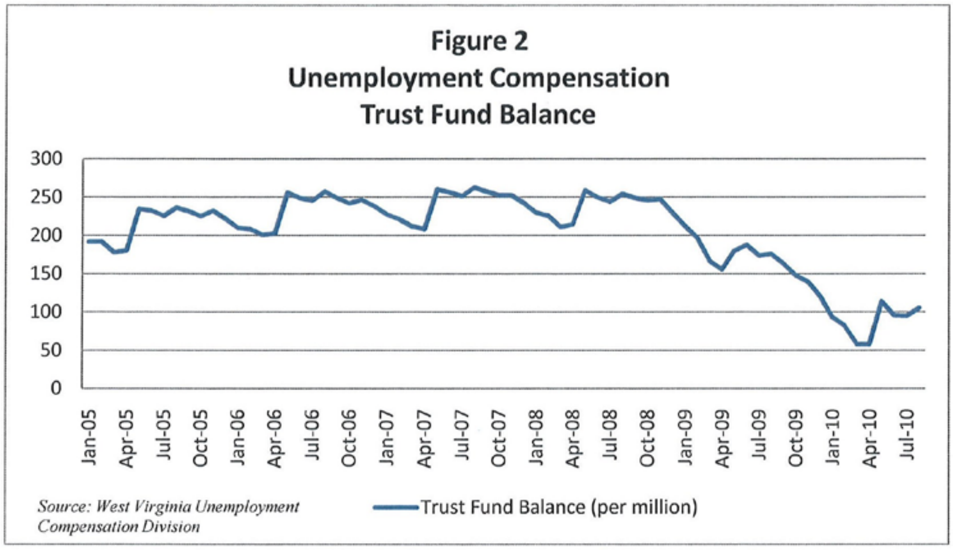
The most recent recession officially began in December 2007 and concluded June 2009. Figure 1 shows the West Virginia and United States unemployment rates from January 2007 through August 2010. West Virginia's unemployment rate has mirrored the national unemployment rate but has consistently remained below it, and it peaked (March 2010) several months after the peak of the U.S. unemployment rate (October 2009). Although the recession has ended, unemployment is still relatively high and continues to put pressure on unemployment trust funds around the country. Many states' unemployment trust funds have already become insolvent, and West Virginia's Unemployment Trust Fund is projected to reach insolvency in March 2011.

Although the recession has ended, unemployment is still relatively high and continues to put pressure on unemployment trust funds around the country.



As seen in Figure 2, the Trust Fund balance has been on a downward trend since April 2008. The current recession officially began for the United States in December 2007, but West Virginia did not initially realize the impact of the recession until late 2008. The 2009 legislative changes that increased the wage base from $8,000 to $12,000 to determine an employer's unemployment tax liability, increased funds from $155 million to $180 million in May 2009 and the funds increased to $188 million in June 2009. After the initial impact of the legislation, the trust fund balances have continued to decrease since June 2009. Finally, funds in April 2010 were $58 million, less than a quarter of the fund balance in November 2008.

After the initial impact of the legislation, the trust fund balances have continued to decrease since June 2009.



Most State Unemployment Trust Funds Are Insolvent

Table 1 shows important statistics for West Virginia and its surrounding states. The contiguous states have borrowed substantial amounts from the federal government to supplement their unemployment trust funds. With the exception of the state of Virginia, surrounding states have higher maximum unemployment tax rates. Additionally, West Virginia has the third highest maximum weekly benefit, paying $424 per week. West Virginia's taxable wage base is currently the highest of these states; however, that amount is temporary and will drop to $9,000 when the trust fund reaches $220 million. **The UC Division credits the increase of the taxable wage base as a contributing factor for the Trust Fund remaining solvent in 2009.**

The contiguous states have borrowed substantial amounts from the federal government to supplement their unemployment trust funds.

Table 1 Contiguous States Compared to West Virginia				
State	**Maximum Tax Rate**	**Taxable Wage Base**	**Maximum Weekly Benefit Payment**	**Loan Amount**
Virginia	6.68%	$8,000	$378	$346,876,000
West Virginia	8.50%	$12,000*	$424	$0.00
Ohio	9.40%	$9,000	$510	$2,314,18,800
Kentucky	10.00%	$8,000	$415	$795,100,000
Pennsylvania	10.38%	$8,000	$572	$3,008,614,961
Maryland	13.50%	$8,500	$410	$133,840,765

Source: WV Unemployment Compensation Division Data
**$12,000 will reduce to $9,000 when the Trust Fund reaches $220 Million.*

West Virginia Legislative Changes in 2009 Were a Move in the Right Direction

During the 2009 legislative session, the Legislature made significant changes to the West Virginia Code to address the projected insolvency of the Unemployment Trust Fund. WV Code §21A-1A-28 provides the following:

> *"Threshold wage" means the wage amount the employer pays unemployment taxes on for each person in his or her employ during a calendar year. On and after the effective date of the amendment and reenactment of this chapter by the Legislature in 2009, the threshold wage will be $12,000."*

From 1981 until 2009 the threshold wage was set at $8,000.

From 1981 until 2009 the threshold wage was set at $8,000. This meant the employer was required to pay unemployment compensation tax on the first $8,000 of each employee's wages or salaries. The 2009 legislative amendment increased this threshold wage to $12,000 for employee's earnings for the year of 2009. Additional Code change states the following:

> *"...Provided, that when the moneys in the unemployment fund reach $220 million on February 15 of any year, the threshold wage thereafter will be reduced*

> *to $9,000: Provided, however, that each year thereafter the threshold wage shall increase or decrease by the same percentage that the state's average wage increases or decreases."*

This amendment requires the threshold wage to be reduced to $9,000 when the trust fund reaches $220 million on February 15th of any subsequent year. The amendment also requires that when the wage base is reduced to $9,000, it will be indexed to increase or decrease based on the percentage change of the state's average wage. This amendment was in line with a 2005 legislative audit that recommended the Legislature consider placing a mechanism in statute that would automatically adjust the wage base. This part of the amendment was not intended to address the immediate concern of insolvency, but instead it is a proactive measure with long-term implications. An indexed wage base allows unemployment tax revenue to keep pace with salaries. In the long-run, an indexed wage base will help build a healthy trust fund. Wayne Vroman, a national authority on unemployment insurance (UI) financing, summarizes the overall economic theory supporting forward funding of the UI programs:

An indexed wage base allows unemployment tax revenue to keep pace with salaries.

> *"Trust fund balances are built up before recessions, drawn on during recessions, and then rebuilt during the subsequent recoveries. The funding arrangement implies that the program acts as an automatic stabilizer of economic activity, that it makes larger benefit payments than tax withdrawals during recessions and larger tax withdrawals than benefit payments during economic expansions."*

Increasing the wage base in 2009 is the principal reason for the Trust Fund remaining solvent through 2010.

Raising the threshold wage base to $12,000 was intended to avert insolvency of the Trust Fund by immediately generating higher unemployment tax revenue. Increasing the wage base in 2009 is the principal reason for the Trust Fund remaining solvent through 2010. According to the most recent projections (September 2010), the Trust Fund is expected to become insolvent in March 2011 by a little more than $2.0 million, and have a relatively small balance of $9.8 million by December 2011. This is an improvement over the previous projections that estimated a negative balance of $70.7 million by December 2011. If insolvency occurs, the UC Division may have to borrow from the Federal Government or issue bonds in order to pay unemployment benefits to claimants.

Structural Weaknesses Still Remain in West Virginia's Unemployment Insurance System

Despite the 2009 legislative changes to the wage base, West Virginia's unemployment insurance system still has structural weaknesses that are contributing to the current financial difficulties. Namely, **the unemployment tax schedules that are tied to the Trust Fund balance do not adequately address the funding needs of the system during declining economic conditions.** Unemployment tax rates for employers are determined in two parts: 1) an experience rating system, and 2) the level of the Trust Fund balance. An experience rating system determines the unemployment tax rate based on an employer's history of contributions and charges of unemployment benefits. Employers who have a history of contributing more into the Trust Fund than they charge against it in benefit payments for employees will have lower unemployment tax rates. Conversely, employers who have a history of charging more against the Trust Fund in benefit payments than they contribute to the Trust Fund will have higher unemployment tax rates.

In addition to the experience rating, an employer's unemployment tax rate is determined by the balance of the Unemployment Trust Fund.

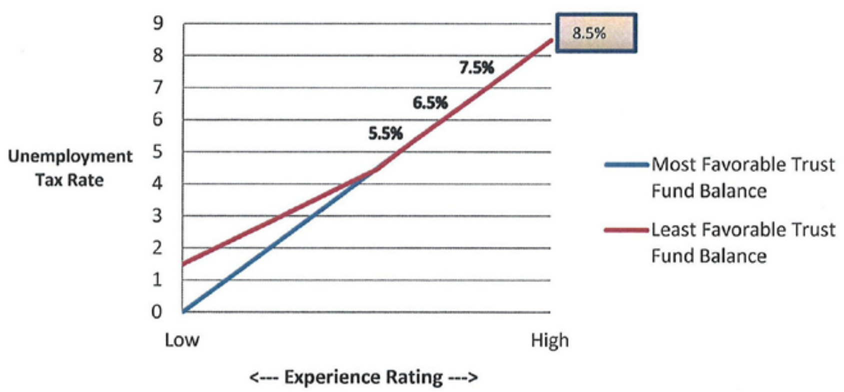
In addition to the experience rating, an employer's unemployment tax rate is determined by the balance of the Unemployment Trust Fund. West Virginia has in statute five different fund balance measures that trigger a different tax rate schedule that correspond to each experience rating. This process for West Virginia is shown in Figure 3 for the most favorable and least favorable Trust Fund balances (the highest and the lowest of the five trust fund measures).

Employers with consistent experiences of charges exceeding contributions are considered "debit employers," and they have the highest tax rates.

When the Unemployment Trust Fund is at its most favorable level, the unemployment tax rates are at the lowest schedule of tax rates, ranging from 0 to 8.5 percent depending on an employer's experience rating. Those employers with low experience ratings (contributions to the trust fund exceed benefits charged against the fund) will have lower tax rates than employers with high experience ratings (benefit charges against the fund exceed contributions into the fund). Employers with consistent experiences of charges exceeding contributions are considered "debit employers," and they have the highest tax rates. The tax rates for debit employers, by statute, range from 5.5 percent to the maximum 8.5 percent.

A primary problem with the State's unemployment insurance system occurs when the Trust Fund balance is declining. Figure 3 shows that as the Trust Fund balance drops from its most favorable level to its least favorable level, tax rates increase, **but only on those who are not debit employers.** This results in two problems. One is an equity problem in that debit employers, who are placing the most pressure on the Trust Fund, are not bearing any additional financial burden to help alleviate the financial difficulty. The second problem is that this mechanism does not generate enough revenue to bolster the Trust Fund in a slumping economy because it is not raising taxes on all employers. From the standpoint of an insurance system in which there are known insureds who charge more on the insurance fund than they contribute in premium payments are receiving a benefit at the expense of employers who do not burden the fund.

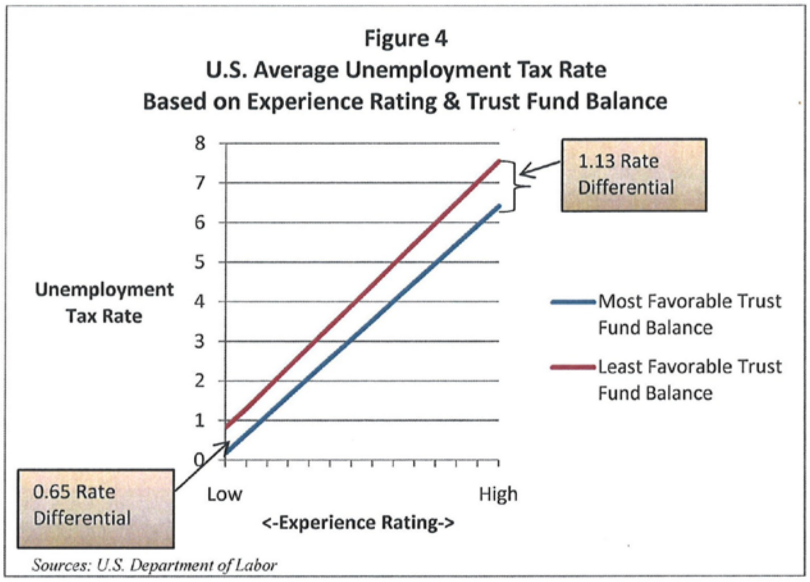
Figure 3
West Virginia Unemployment Tax Rate
Based on Experience Rating and Trust Fund Balance



Source: West Virginia Code §21A-5-10

Although states raise unemployment taxes on all employers, they tend to raise the unemployment taxes higher on employers with high experience ratings than employers with low experience ratings.

In contrast to how West Virginia attempts to build its trust fund during a recession, most states on average increase unemployment tax rates on all employers and more so on debit employers as their trust funds are declining. Figure 4 illustrates this point by showing the U.S. average minimum and maximum tax rates for the most favorable and least favorable trust fund balances. The tax rate differential for employers with high experience ratings between the most favorable and least favorable conditions is 1.13 percentage points. Whereas, for the same scenario, the tax rate differential for employers with low experience ratings is 0.66 percentage points. This reveals that although states raise unemployment taxes on all employers, they tend to raise the unemployment taxes higher on employers with high experience ratings than employers with low experience ratings. This suggests a more logical approach since employers with higher experience ratings are exerting the greater amount of pressure on the trust fund.



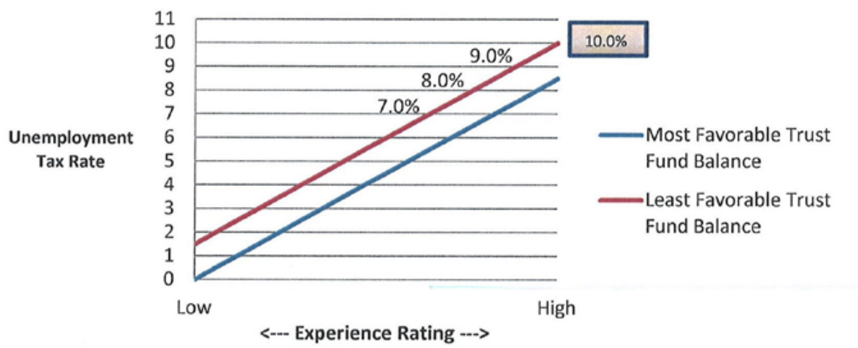
The data illustrated in Figure 4 can be seen for each state in Appendix B. Appendix B shows that most states have a minimum tax rate even with the most favorable Trust Fund balance. The average minimum tax rate is .18 percent of taxable wages, which increases on average to .83 percent in the least favorable schedule. West Virginia's unemployment tax rate is zero when the Trust Fund balance is at the most favorable level, and increases to 1.5 percent in the least favorable Trust Fund balance. The average state's maximum tax rate in the most favorable schedule is 6.42 percent and increases to 7.55 percent on average in the least favorable schedule. Under federal law, the maximum rate must be at least 5.4 percent.

The Legislature should consider a tax schedule that increases for all employers when the Trust Fund balance is declining.

The Legislature should consider a tax schedule that increases for all employers when the Trust Fund balance is declining, as proposed in Figure 5. As stated previously, the unemployment tax rates on debit employers remain constant at 5.5, 6.5, 7.5 and 8.5 percent when the Trust Fund balance is declining, while tax rates increase on non-debit employers up to 1.5 percentage points. Raising the tax rates on debit employers as the Trust Fund balance decreases in the same proportion as non-debit employers would require the tax rates on debit employers to rise by a maximum amount of 1.5 percentage points, which would result in maximum tax rates of 7.0, 8.0, 9.0 and 10.0 percent. This structural change would serve the purpose of raising unemployment tax revenues by a greater amount during declining economic conditions, for a healthier

Trust Fund balance. The proposed tax increase would also provide a more equitable unemployment tax system, in that all employers would experience increases and decreases in tax rates under various economic conditions. Currently, debit employers' tax rates are constant under all circumstances, so that they receive no tax rate relief when the Trust Fund moves toward healthier balances.

Figure 5
Proposed Increase in the West Virginia Unemployment Tax Rate



Source: West Virginia Code § 21A-5-10 and Legislative Auditor's Proposed Unemployment Tax Rates.

Currently, debit employers' tax rates are constant under all circumstances, so that they receive no tax rate relief when the Trust Fund moves toward healthier balances.

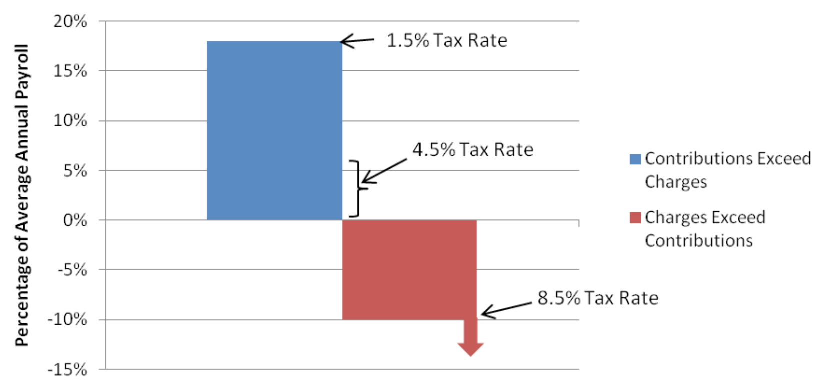
The Legislative Auditor did not have sufficient data to estimate the additional tax revenue that would be generated by the proposed tax increase. Several million would likely be raised, which would improve the Trust Fund and possibly avert insolvency if the Legislature implements the proposed tax increase during the 2011 legislative session. Increasing the tax rates as proposed should not be viewed solely as a way to address the current Trust Fund balance, but it should also be seen as a means to address a significant structural weakness that has long-term effects. The unemployment insurance system must operate in line with the fundamental insurance principle that premiums need to be increased on those whose claims payouts historically exceed their premium payments.

The Experience Rating System Has Structural Weaknesses

It was stated previously that the unemployment tax rates for employers are determined by two factors: 1) the experience rating, and 2) the Trust Fund balance. It has been shown that the unemployment tax rates that are tied to the Trust Fund balance do not increase on all employers. In addition to this structural weakness, West Virginia's experience rating mechanism has impairments. The experience rating mechanism assigns tax rates to each employer based on the employer's account history of benefits charged (unemployment benefit payments) and contributions paid (payments into the Trust Fund). Figure 6 shows that when the Trust Fund is in the least favorable condition, the lowest tax rate (1.5 percent) is assigned to companies with contributions that exceed charges by 18 percent or more of a company's average annual payroll. The unemployment tax rate increases as the excess contributions as a percentage of the average annual payroll drops below 18 percent. When the excess contributions reach 0 to 6 percent of the annual payroll, the tax rate increases to 4.5 percent. When employers have charges in excess of contributions, their unemployment tax rates will increase incrementally to a maximum of 8.5 percent when excess charges reach 10 percent or more of their average annual payroll.

A major structural concern with the State's unemployment insurance rating system is that it assigns the highest tax rate of 8.5 percent to excess charges of only 10 percent or more of annual payroll. Many employers have excess charges well above 10 percent of annual payroll.

Figure 6
Experience Rating System
Under the Least Favorable Trust Fund Balance



Source: Legislative Auditor's analysis of West Virginia Code § 21A-5-10

Assigning the highest tax rate to a relatively low percentage of excess charges creates a significant inequity and a disincentive for employers to control their excess charges.

A major structural concern with the State's unemployment insurance rating system is that it assigns the highest tax rate of 8.5 percent to excess charges of only 10 percent or more of annual payroll. Many employers have excess charges well above 10 percent of annual payroll. These types of employers are placing much greater pressure on the Trust Fund than debit employers with less excess charges. This creates an inequitable situation as well as creating a disincentive for employers to lower their excess charges. Furthermore, for calculation purposes, West Virginia Code does not allow excess charges above 15 percent of annual payroll to be used in the rate calculations (§ 21A-5-10(c)). Effectively, a debit employer's excess charges that exceed 15 percent of payroll are eliminated at the time of rate computations. The Legislative Auditor recommends that if the Legislature increases the unemployment tax rates as this report proposes, it should consider assigning the highest tax rate to a higher ratio of excess charges to average annual payroll than the current 10 percent. This would create more equity in the system, as well as provide an incentive for employers to improve their control of excess charges. The Legislative Auditor recommends that the highest tax rate be assigned to at least a 25 percent ratio of excess charges to average annual payroll. This would also require that the excess charges above the current 15 percent that are eliminated for rate computations would have to be raised above 25 percent.

Benefits Paid per Dollar of Contribution Decreased from 2009 to 2010

Employers are issued an unemployment tax rate in December of each year, and then the employer submits quarterly statements and payments to the Unemployment Compensation (UC) Division that is tracked in separate accounts. Each employer's account is either positive or negative; a negative account is one in which the employer's paid claims exceed the amount of contributions submitted; conversely a positive account is one in which the amount of contributions exceeds any benefits charged against the account.

This can be analyzed by comparing the benefits paid per year to the amount of contributions received by the UC Division. Table 3 illustrates the amount of contributions received and the benefits paid within each industry for the past five years. If the ratio is greater than one, then there is a debit situation in which more benefits are paid than contributions received. If the ratio is less than one, then the account has a credit balance in which contributions received exceed the benefits distributed to claimants.

Table 2 Benefits Paid Per Dollar of Contribution FY 2006-2010*						
Industry	**Benefits Paid per Dollar of Contribution**					
	2010	**2009**	**2008**	**2007**	**2006**	**5-Year Average**
Mining	0.94	2.75	0.5	0.91	0.57	1.13
Management of Companies and Enterprises	0.35	0.96	0.59	0.84	0.66	0.68
Manufacturing	0.86	3.41	1.33	1.11	1.26	1.59
Construction	2.26	3.05	2.05	3.34	1.33	2.41
Transportation and Warehousing	0.9	2.17	1.17	1.09	0.82	1.23
Information	0.46	1.2	0.63	0.76	0.83	0.78
Utilities	0.23	0.31	0.28	0.3	0.45	0.31
Wholesale Trade	0.68	1.56	0.93	0.67	0.61	0.89
Professional, Scientific, and Technical Services	0.59	1.2	0.77	0.65	0.69	0.78
Real Estate, Rental and Leasing	1.06	1.67	33.97	0.88	0.62	7.64
Other Services	0.86	1.32	1.48	1.27	1.07	1.2
Finance and Insurance	0.39	0.8	0.72	0.52	0.71	0.63
Educational Services	0.72	0.86	0.91	0.94	0.92	0.87
Non-classified	0.63	1.16	1.5	1.51	22.62	5.48
Agriculture, Forestry, Fishing and Hunting	1.71	1.97	1.23	1.08	0.99	1.40
Health Care and Social Assistance	0.43	0.62	0.58	0.57	0.55	0.55
Administrative, Support, Waste Management, and Remediation Services	0.99	1.48	0.79	0.71	0.61	0.92
Public Administration	0.76	0.86	0.77	0.82	0.85	0.81
Retail Trade	0.49	0.84	0.69	0.47	0.48	0.59
Accommodation and Food Services	0.49	0.77	0.57	0.59	0.49	0.58
Arts, Entertainment, and Recreation	0.84	0.7	0.69	0.6	0.61	0.69
Totals	**0.95**	**1.75**	**1.48**	**1.24**	**0.84**	**1.25**

Source: West Virginia Unemployment Compensation Data
**It should be noted that debit employers may be within any industry but the ratios represent the net result of all employers in an industry. Furthermore, a debit industry does not mean that every employer in the industry was a debit employer.*

Table 2 also shows that there are signs of improvement in the FY 2010 totals compared to the last three fiscal years. In FY 2010, the State paid $0.95 in benefits for every dollar in contributions received, a 54 percent improvement from FY 2009. In FY 2009, 12 industries paid more in benefits than contributions. In FY 2010, only three industries (construction, real estate, and agriculture) were in a debit situation.

In FY 2010, the State paid $0.95 in benefits for every dollar in contributions received, a 54 percent improvement from FY 2009.

Overall in FY 2009, the State paid $1.75 in benefits for each dollar received. Four industries had twice the benefits than its contributions. These included: manufacturing, construction, mining, and transportation/ warehousing. The construction industry has been a debit industry for the past five fiscal years.

Claims paid in excess of contributions received by any industry have a negative effect on the solvency of the Trust Fund.

Debit Employers Contribute Significantly to the Insolvency of the Trust Fund

Claims paid in excess of contributions received by any industry have a negative effect on the solvency of the Trust Fund. Table 3 details total contributions and benefits paid for the last five fiscal years. In total, the construction industry has contributed approximately $137.6 million to the Unemployment Trust Fund but the Fund has paid over $334 million in benefits since FY 2006. The construction industry has contributed $196.4 million less than the Trust Fund has distributed in benefits in the past five fiscal years.

Table 3
Total Contributions and Benefits Paid
For FY 2006-2010

Industry	Total Contributions	Total Benefits Paid	Total Difference
Construction	$137,471,067.10	$333,948,329.04	$(196,477,261.94)
Manufacturing	$77,698,677.13	$127,293,143.49	$(49,594,466.36)
Mining	$55,394,531.60	$67,933,823.21	$(12,539,291.61)
Transportation and Warehousing	$ 24,029,249.46	$30,601,138.45	$(6,571,888.99)
Other Services	$26,445,036.49	$32,073,942.95	$(5,628,906.46)
Non Classifiable Establishments	$643,607.23	$2,788,832.84	$(2,145,225.61)
Agriculture, Forestry, Fishing and Hunting	$3,352,037.56	$4,730,534.35	$(1,378,496.79)
Real Estate, Rental & Leasing	$9,877,057.66	$10,234,820.77	$(357,763.11)
Management of Companies and Enterprises	$ 2,439,563.61	$1,662,348.79	$777,214.82
Educational Services	$9,578,557.52	$ 8,435,697.96	$1,142,859.56
Public Administration	$12,121,454.03	$9,975,784.58	$2,145,669.45
Wholesale Trade	$29,894,937.92	$27,627,322.34	$2,267,615.58
Information	$11,959,477.12	$9,555,323.09	$2,404,154.03
Administrative, Support, Waste Management, & Remediation Services	$49,490,018.86	$ 46,325,074.02	$3,164,944.84
Arts, Entertainment, & Recreation	$10,076,208.50	$6,910,259.76	$3,165,948.74
Utilities	$6,006,364.30	$1,867,431.74	$4,138,932.56
Professional, Scientific, & Technical Services	$33,274,352.36	$26,782,228.18	$6,492,124.18
Finance & Insurance	$19,971,099.40	$12,676,408.37	$7,294,691.03
Accommodations & Food Services	$58,279,252.34	$34,991,664.49	$23,287,587.85
Retail Trade	$81,713,484.09	$49,771,055.93	$31,942,428.16
Health Care & Social Services	$84,132,123.59	$ 47,116,086.23	$37,016,037.36
TOTAL	**$743,848,157.87**	**$ 893,301,250.58**	**$(149,453,092.71)**

Source: West Virginia Unemployment Compensation Division

Delinquent and Uncollectable Accounts Totaling $9.8 Million Are Less Than Two Percent of Collections

The Unemployment Compensation Division effectively collects 98.67 percent of all contributions levied and ranks high nationally in collections efforts. Table 4 illustrates the total amount of contributions collected, delinquencies, and uncollectable totals for April 2005 through January 2010.

Table 4
Contribution Analysis
April 2005-January 2010

Total Deposits	$743,752,214
Total Delinquencies	$5,206,632
Total Uncollectable	$4,696,618

Source: WV Unemployment Compensation Division

Overall, the collections efforts of the UC Division should be commended, but the Legislative Auditor recommends that the UC Division utilize §21A-1-4 which states in pertinent part:

> *"The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the executive director, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the fund or has entered into and remains in compliance with a repayment agreement."*

The Unemployment Compensation Division effectively collects 98.67 percent of all contributions levied.

This system would prohibit any delinquent business from maintaining any license, including business licenses by the State of West Virginia until all funds have been paid or a repayment agreement has been reached and complied with. The UC Division indicated that letters requesting revocation of business licenses were sent monthly to the Tax Department's Registration Unit from January 2006 through February 2008, and indicated that the Tax Department did not notify the UC Division whether or not business registrations were indeed revoked. Therefore the Division discontinued the referrals based on the uncertainty as to the effectiveness of the process.

The Legislative Auditor contacted the Tax Department in order to analyze whether or not these business licenses were revoked. The Tax Department indicated that of all the revocations requested only nine still maintained business licenses and the remaining 126 did have business licenses revoked. The Tax Department also stated the following:

> *"Inter-departmental records of referrals beginning in January 2007 through January 2008 indicate that the Department's Office of Business Registration took some form of action on most, if not all, of the entities referred by the UC Division. It is possible, however, that there may have been a lapse in communication between the Department and the UC Division regarding the ultimate action taken."*

Currently, the trust fund is projected to reach insolvency in March 2011.

The Legislative Auditor recommends that the UC Division work closely with the Tax Department in order to utilize the Employer Violator System requirements of West Virginia Code and continue to request revocations of business licenses for lack of payment.

Possible Assessments on Employees and Employers Are Short-term Solutions to Advert Insolvency

In addition to a solvency assessment on employers, some states are placing Unemployment Insurance (UI) taxes on employees. Only Alaska, New Jersey, and Pennsylvania levy UI taxes on workers.

Solvency assessments may be placed on employers in order to increase solvency of the Trust Fund. In 2010, 19 states had solvency assessments placed on employers. Solvency adjustments are triggered by fund balances and are utilized to increase trust fund balances. Currently, West Virginia does not have any additional employer assessments in place to bolster fund balances. Solvency assessments at the national level range from 0 to 33 1/3 percent. The Unemployment Compensation Division estimates that if an assessment of 0.3% on employers were made, then $59.5 million would be raised in calendar year 2011.

In addition to a solvency assessment on employers, some states are placing Unemployment Insurance (UI) taxes on employees. Only Alaska, New Jersey, and Pennsylvania levy UI taxes on workers. The tax base is that applicable to employers, except in Pennsylvania where employee contributions are calculated on total gross covered wages paid for employment. Worker-taxes are deducted by the employer from the worker's pay and forwarded with the employer's taxes to the state agency. In Alaska, the tax rate is equal to 20% of the average benefit cost rate, but not less than 0.5% or more than 1.0%. In New Jersey, the tax rate is 0.3825% effective July 1, 2004 and thereafter. Depending on the adequacy of the fund balance in a given year, Pennsylvania employees pay contributions ranging from 0.0% to 0.09% of total gross covered wages paid for employment. The Unemployment Compensation Division estimates that if an assessment of .15% were placed on employees, then $38.4 million would be generated in calender year 2011.

The State's unemployment tax rate schedules that are tied to the financial condition of the Trust Fund increase tax rates only on those who are not debit employers.

Conclusion

The recent recession has more than doubled the state's unemployment rate. This has put substantial pressure on the State's Unemployment Compensation Trust Fund. Currently, the Trust Fund is projected to reach insolvency in March 2011. The 2009 amendments to state code to avert the insolvency of the Trust Fund were effective in keeping the fund solvent through calendar year 2010. Furthermore, the changes made by the 2009 Legislature were necessary to develop long-term improvements in the unemployment insurance system.

However, there are still structural weaknesses in the unemployment insurance system that are contributing to the current financial difficulties in the Trust Fund. The State's unemployment tax rate schedules that are tied to the financial condition of the Trust Fund increase tax rates only on those who are not debit employers. This is contrary to how other states on average manage their unemployment trust funds during economic declines. On average, states increase unemployment tax rates on all employers, and more so on employers with high experience ratings. Debit employers place the highest amount of pressure on the State's Unemployment Trust Fund and should bear more of the burden in strengthening its financial condition. Moreover, the growth of unemployment tax revenue is hampered during a slow economy if only a portion of employers are paying at a higher tax rate.

Further consideration should be given to raising the tax rates on debit employers at a higher tax rate differential than non-debit employers.

In addition, the State's experience rating system imposes the highest tax rate of 8.5 percent on a relatively low percentage of excess charges. This creates an inequitable situation as well as creating a disincentive for employers to lower excess charges. Employers with high excess charges put great pressure on the Trust Fund and should pay at a higher tax rate.

The Legislature should consider amending its tax schedules that are tied to the condition of the Trust Fund so that the unemployment tax rate increases on all employers. Further consideration should be given to raising the tax rates on debit employers at a higher tax rate differential than non-debit employers. Also, the Legislature should consider raising the excess charges threshold from 10 percent to at least 25 percent of average annual payroll. It should be noted that the structural weaknesses identified in this report need to be addressed for long-term improvements, and addressing them will likely not avert the insolvency expected in March 2011. The State may have to provide a short-term influx of revenue by some means to keep the Trust Fund solvent.

Recommendations

1. The Legislature should consider amending the unemployment tax schedules that are tied to the trust fund balance so that the unemployment tax increases on all employers.

2. The Legislature should consider raising the tax rates on debit employers at a higher tax rate differential than non-debit employers.

3. The Legislative Auditor recommends that the UC Division work closely with the Tax Department in order to utilize the Employer Violator System requirements of West Virginia Code and continue to revoke business licenses for lack of payment.

4. The Legislative Auditor recommends that if the Legislature increases the unemployment tax rates as this report proposes, it should consider assigning the highest tax rate to a higher ratio of excess charges to average annual payroll than the current 10 percent.

5. The Legislative Auditor recommends that the highest tax rate be assigned to at least a 25 percent ratio of excess charges to average annual payroll.

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX

John Sylvia
Director

October 29, 2010

Russel L. Fry, Acting Executive Director
WorkForce West Virginia
112 California Avenue, Building 4
Charleston, WV 25305

Dear Mr. Fry:

This is to transmit a draft copy of the Performance Review of the Unemployment Compensation Division, WorkForce West Virginia. This report is scheduled to be presented during the November 15-17, 2010 interim meetings of the Joint Committee on Government Operations, and Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on November 3, 2010. Please notify us to schedule an exact time. In addition, we need your written response by noon on November 5, 2010 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Wednesday, November 10, 2010 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

John Sylvia

John Sylvia

Enclosure

JS/jda

Joint Committee on Government and Finance

Appendix B: Fund Requirements and Range of Rates for All States

Table 2-10: FUND REQUIREMENTS AND RANGE OF RATES
(Payroll used is that for last year except as indicated)

State	Most Favorable Schedule			Least Favorable Schedule		
	When Fund Balance	Range Of Rates		When Fund Balance	Range Of Rates	
		Minimum	Maximum		Minimum	Maximum
AL[1]	≥125% of desired level	0.14%	5.4%	<70% of desired level	0.59%	6.74%
AK[2]	Law authorizes agency to set rates	≥1%	≥5.4%	Law authorizes agency to set rates	≥1%	≥5.4%
AZ	≥12% of taxable payrolls	0.02%	5.4%	<3% of taxable payrolls	0.02%	≥5.4%
AR	>5% of payrolls	0.0%	5.9%[3]	<0.4% of payrolls	0.9%	6.8%[3]
CA[4]	>1.8% of taxable payrolls	0.1%	5.4%	<0.6% of taxable payrolls	1.5%	6.2%
CO	≥$450 million	0.0%	5.4%	≤$0	1.0%	5.4%
CT	>0.8% of payrolls	0.5%	5.4%	<0.8% of payrolls	1.9%[5]	6.8%[5]
DE	Dependent upon the state experience factor	0.1%	8.0%	Dependent upon the state experience factor	0.1%	8.0%
DC	>3.0% of payrolls	0.1%	5.4%	≤0.8% of payrolls	1.9%	7.4%
FL[4]	Current adjusted benefit ratio	0.1%	5.4%	Current adjusted benefit ratio	0.1%	5.4%
GA	≥State-wide reserve ratio of 2.7%	0.01%	5.4%	<State-wide reserve ratio of 1.25%	0.03%	7.29%
HI[1]	Ratio of the current reserve fund to the adequate reserve fund is > 1.69	0.0%	5.4%	Ratio of the current reserve fund to the adequate reserve fund is < 0.2	2.4%	5.4%
ID	State calculated average high cost multiple	0.18%	5.4%	State calculated average high cost multiple	0.96%	6.8%
IL	Dependent upon the adjusted state experience factor	0.2%	6.4%, except "small" employers capped at 5.4%	Dependent upon the adjusted state experience factor	0.3%	9.6% except "small" employers capped at 5.4%
IN[4, 6]	≥2.25% of payrolls	0.1%	5.4%	<1.0% of payrolls	1.1%	5.6%
IA	Current reserve fund ratio/highest benefit cost ratio ≥ 1.3	0.0%	7.0%	Current reserve fund ratio/ highest benefit cost ratio < 0.3	0.0%	9.0%
KS	Dependent upon state adjustment factor	Not Specified	7.4%	Dependent upon state adjustment factor	Not Specified	7.4%
KY	≥$350 million	0.3%	9.0%	<$150 million	1.0%	10.0%
LA	$>1.4 billion	0.07%	4.86%	<$400 million	0.09%	6.0%
ME	≥Reserve multiple of over 1.58	0.44%	5.4%	<Reserve multiple of under 0.25	1.09%	9.44%
MD	>5% of taxable payrolls	0.30%	7.5%	≤3.0% of taxable payrolls	2.2%	13.5%
MA	1.75% of taxable payrolls	0.8%	7.8%	0.5% of taxable payrolls	1.58%	15.4%
MI[4]	Based on benefit ratio[7]	0.06%	10.3%	Based on benefit ratio[7]	0.06%	10.3%

2-18

Table 2-10: FUND REQUIREMENTS AND RANGE OF RATES (Payroll used is that for last year except as indicated)						
State	Most Favorable Schedule			Least Favorable Schedule		
	When Fund Balance	Range Of Rates		When Fund Balance	Range Of Rates	
		Minimum	Maximum		Minimum	Maximum
MN	≥0.75% of payrolls	0.1%	9.0%	<0.55% of payrolls	0.4%	9.3%
MS[4]	Depends on statutory variables that comprise the general experience rate	Not Specified	5.4%	Depends on statutory variables that comprise the general experience rate	Not Specified	5.4%
MO[8]	>$750 million	0.0%	5.4%	<$350 million	0.0%	7.8%
MT	≥2.6% of payrolls	0.0%	6.12%	<0.25% of payrolls	1.62%	6.12%
NE	No requirements for fund balance in law	Not Specified	≥5.4%	No requirements for fund balance in law	Not Specified	≥5.4%
NV	Rates set by agency in accordance with authorization in law	0.25%	5.4%	Rates set by agency in accordance with authorization in law	0.25%	5.4%
NH	≥$300 million	0.1%	6.3%	<$250 million	0.1%	6.3%[9]
NJ[10, 11]	≥1.4% of taxable wages in prior year	0.3%	5.4%	≤ 0.49% of taxable wages in prior year	1.2%	7.0%
NM	≥2.3% of payrolls	0.03%	5.4%	<.3% of payrolls	2.7%	5.4%
NY	≥5% of payrolls	0.0%	5.9%	<0% of payrolls	0.9%	8.9%
NC	≥9% of taxable payrolls	0.0%	5.7%	<2.0% of taxable payrolls	0.0%	5.7%
ND	Rates set by agency in accordance with authorization in law	0.01%	≥5.4%	Rates set by agency in accordance with authorization in law	0.01%	≥5.4%
OH[1]	≥30% above minimum safe level	0.0%	6.3%	≤60% below minimum safe level	0.3%	Not Specified[12]
OK	≥3.5 x 5-year average of benefits	0.1%	5.5%	<2 x 5-year average of benefits	0.3%	9.2%
OR[13]	≥200% of fund adequacy % ratio	0.38%	5.4%	<100% of fund adequacy % ratio	2.08%	5.4%
PA	Law authorizes agency to set rates	0.3%	7.7%	Law authorizes agency to set rates	0.3%	7.7%
PR	>$589 million	1.0%	5.4%	<$370 million	2.5%	5.4%
RI[4, 14]	≥6.4% of payrolls	0.6%	7.0%	<2.75% of payrolls	1.9%	10.0%
SC[15]	Statewide reserve ratio is ≥2.0%	0.54%	5.4%	Statewide reserve ratio is <1.4%	1.24%	6.1%
SD[4]	≥$11 million	0.0%	8.5%	<$5.5 million	1.5%	10.0%
TN	≥$850 million	0.1%	10.0%	<$450 million	1.1%	10.6%
TX	Based on benefit ratio	0.0%	6.0%	Based on benefit ratio	0.0%	6.0%
UT[16]	Based on reserve factor calculation	0.0%	9.0%	Based on reserve factor calculation	0.0%	9.0%
VT[1]	≥2.5 x highest benefit cost rate	0.4%	5.4%	<1.0 x highest benefit cost rate	1.3%	8.4%
VA	Fund balance factor is >120%	0.0%	5.4%	Fund balance factor is <50%	0.1%	6.2%
VI	Ratio of current balance to adequate balance is ≥ 2	0.0%	6.0%	Ratio of current balance to adequate balance is <0.2	0.0%	6.0%
WA	No requirements for fund balance in law	0.0%	5.4%	No requirements for fund balance in law	0.0%	5.4%
WV	>3.0% of gross covered wages	0.0%	8.5%	<1.75% of gross covered wages	1.5%	8.5%
WI	≥$1.2 billion	0.0%	8.5%	<$300 million	0.07%	8.5%

2-19

Table 2-10: FUND REQUIREMENTS AND RANGE OF RATES (Payroll used is that for last year except as indicated)						
State	Most Favorable Schedule			Least Favorable Schedule		
	When Fund Balance	Range Of Rates		When Fund Balance	Range Of Rates	
		Minimum	Maximum		Minimum	Maximum
WY[4]	Based on benefit ratio	0.0%	8.5%	Based on benefit ratio	0.0%	8.5%

GENERAL NOTE: Table 2-10 incorporates the various methods of determining the minimum and maximum rates under the least and most favorable circumstances. In some states, these calculations include adjustments for solvency and social cost after the rate. The rates above only reflect those tax rate ranges for contributions to be deposited into the Unemployment Trust Fund.

[1] Desired level in AL is 1.4 x the product of the highest payrolls of any 1 of the most recent preceding 3 FYs multiplied by the highest benefits payroll ratio for any 1 of the 10 most recent FYs. In HI, adequate reserve fund defined as the highest benefit cost rate during past 10 years multiplied by total taxable remuneration paid by employers in same year. In OH, minimum safe level defined as an amount equal to 2 standard deviations above the average of the adjusted annual average weekly unemployment benefit payment from 1970 to the most recent CY prior to the computation date. In VT, highest benefit cost rate determined by dividing: the highest amount of benefits paid during any consecutive 12-month period in the past 10 years by total wages during the 4 CQs ending within that period.

[2] The employer's rate is calculated by multiplying 80% of the average benefit cost rate by the employer's experience factor; however, employers in the maximum rate class may not have a rate lower than 5.4%.

[3] The rates shown above do not include the additional contribution assessments (applicable to certain maximum rated deficit employers) of up to an additional 4.0%; and they do not include additional contribution assessments that may be applied under State Unemployment Tax Act (SUTA) dumping statutes.

[4] Social costs included in calculation of basic tax rate. See Table 2-11 for states with other social cost adjustments.

[5] If the fund balance calculations result in a less than 0.8%, a fund balance tax rate of up to 1.4% is levied.

[6] This provision was made effective by legislation enacted which included a retroactive effective date of January 1, 2010.

[7] The rate is made up of three components: chargeable benefit component (CBC), account building component (ABC), and the nonchargeable benefits component.

[8] The maximum rates do not include the surcharge (applicable to certain maximum rated deficit employers) of up to 1.0%. In 2009, this surcharge could total 1.5%. Additionally all rates are reduced by 0.05% to offset the unemployment automation surcharge.

[9] If the benefits charged against an employer's account exceed contributions for four or more consecutive years the maximum rate increase by 0.5%, 1.0%, or 1.5% depending upon trust fund balance.

[10] Fund reserve ratio defined as fund balance as of 3/31 as a percentage of taxable wages in prior year.

[11] If the fund reserve ratio is ≥5% but <7.5% contributions, except for those at the maximum rate, are reduced by 25%, if the fund reserve ratio is ≥7.5% but <10% contributions, except for those at the maximum rate, are reduced by 50%.

[12] Once the trust fund is more than 15% below the minimum safe level, the min. and max. rates change from year to year because there is a formula for determining the Minimum Safe Level rates that includes a flat tax rate and a variable factor in the calculation. The flat tax rate and factor may change from year to year which will change the min. and max. rates from year to year. The formula for the Minimum Safe Level rate when the trust fund is 60% or more below the minimum safe level includes the flat 0.2% rate increase. The flat rate increase is then multiplied by three and the product divided by the average experience rated contribution rate for all employers as determined by the director for the most recent calendar year. The resulting quotient shall be multiplied by an individual employer's contribution rate. The resulting product shall be rounded to the nearest tenth of one per cent, added to the flat rate increase. The total shall be rounded to the nearest tenth of one percent. This becomes the Minimum Safe Level rate used in the rate table.

[13] During the first quarter of each odd-numbered year, all employers except those assigned a 5.4% rate, .03% of wages into the Wage Security Fund and .09% of wages into the Supplemental Employment Department Administration Fund.

[14] Rates are reduced by 0.21% to offset the job development assessment.

[15] Rates are reduced by 0.06% to offset the employment security administrative contingency assessment.

[16] Employer's benefit ratio is multiplied by the annual reserve factor (based upon fund solvency) to determine his/her base tax rate.

Appendix C: Agency Response

WORKFORCE West Virginia USA

Joe Manchin III, *Governor*
Russell L. Fry, *Acting Executive Director*
Kelley Goes, *Cabinet Secretary*

November 8, 2010

PERFORMANCE EVALUATION
NOV 8 2010
AND RESEARCH DIVISION

John Sylvia
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

Dear Mr. Sylvia:

Please find attached our written response to the Performance Review of the Unemployment Compensation Division, WorkForce West Virginia.

If we can be of further assistance, you may contact Michael Moore, Director Unemployment Compensation Division at Michael.O.Moore@wv.og or Wade Wolfingbarger at Wade.H.Wolfingbarger@wv.gov.

Sincerely,

Russell L. Fry
Acting Executive Director

RLF/rb

Executive Division
112 California Avenue
Charleston, WV 25305

An agency of the Department of Commerce
An equal opportunity employer/program and auxiliary aids are available upon request to individuals with disabilities.

The changes made during the 2009 Legislative session, while improving the condition of the trust fund solvency measures, had no impact on the tax rate structure. The West Virginia Unemployment tax rate levels have been in the highest classification for the past twenty years and the trust fund balance has never been high enough during that time to implement a lower tax rate level. Therefore the tax rates on non debit balance employers has not changed during this period as the tax rate levels on debit balance employers have not changed.

Should the legislature take action during the 2011 session to increase tax rates on debit balance employers, the changes would not take effect in time to prevent the trust fund from going insolvent in March or April of 2011 as such changes would not generate any additional revenue reception until the first quarter 2011 reports are filed as due on April 30, 2011. In fact, the changes would have to made to take effect retroactive to January 1, 2011 to receive additional revenue with the first quarter reports.

The best short term solution to avoid trust fund insolvency in 2011 would be a one time cash infusion from another state revenue source. If the trust fund becomes insolvent, we will be required to borrow federal funds to pay benefits. However, before we can borrow federal funds, our trust fund must become insolvent. Our current trust fund includes approximately $ 30 million of Reed Act funds which can be used for administrative costs if appropriated each year by the legislature. If we have to use those funds to pay benefits, we will possibly have a shortage of administrative funds in coming years and will have to reduce services to our clients.

Most State Unemployment Trust Funds Are Insolvent

It should be noted that West Virginia's maximum tax rate is actually 7.5% on employers. The 8.5% tax rate applies only to foreign construction businesses operating in West Virginia. There is however a 1% surtax currently levied on debit balance employers which makes up the 8.5% rate. The 1% surcharge also applies to debit balance employers who have 5.5% and 6.5% rates.

West Virginia Legislative Changes in 2009 Were a Move in the Right Direction

We agree that increasing the taxable wage base in 2009 was a significant reason why the trust fund has not become insolvent in 2010. However it should be noted that we received a one time cash infusion of $ 40 million from the Insurance Commission from the old Workers Compensation Fund monies. Had we not received this funding, we would have had to use Reed Act funds to pay benefits in the early part of 2010.

We believe that the legislation enacted in 2009 is flawed because of the provision to decrease the taxable wage base back to $ 9,000 if the trust fund balance reaches a level of $ 220 million as of February 15 of any year. Even though the legislation calls for the taxable wage base to be indexed thereafter, this would be a step backward and not prepare us for another recessionary cycle in future years. Had the taxable wage base been indexed in the last twenty years, our taxable wage base would currently be about $ 19,800.

Recent studies have shown that most of the states who are solvent have indexed their taxable wage bases for years and many of those states currently have taxable wage bases in excess of $ 20,000.

Structural Weaknesses Still Remain in West Virginia's Unemployment Insurance System

We agree that our current system has a significant structural weakness in that the maximum tax rate on debit balance employers is capped at 7.5%. This problem is caused by the cap of 15% applied to benefit charges applied to an employer's account above the amount of contributions paid into the fund by debit balance employers. Many debit balance employers far exceed benefit charges of 15% over the amount of contributions paid into the fund. Knowing that their tax rate will not increase, they have little incentive to stabilize their workforce. As your charts indicate, employers involved in certain industries are significantly damaging our trust fund solvency at the expense of other employers in the system.

We would recommend that the 15% cap be increased and additional rate tiers be enacted above the 7.5% rate and/or increase the tax rates within the current structure on debit balance employers.

Once again, such a change would not avert the trust fund from going insolvent early in calendar year 2011 as revenue generated by such a change would not be received by then.

Benefits Paid per Dollar of Contribution Decreased from 2009 to 2010

Employers are actually sent their rate statement for the next calendar year in December of the previous year. The rates are computed by freezing the contributions/benefit charge balances as of July 31 reflecting their contributions/benefit charge balances through the second calendar quarter of the year in which the rates for the next year are calculated.

Debit Employers Contribute Significantly to the Insolvency of the Trust Fund

We agree strongly on this point. This is something that needs to be addressed for the long term health of the fund.

Delinquent and Uncollectible Accounts Totaling $ 9.8 Million Are Less Than Two Percent of Collections

The Violators List mandated in SB 246 is for reference by the public. For a number of years we have maintained an intranet default list which is password protected and utilized by other agencies to consult before granting or renewing licenses or permits as issued by those respective agencies. These include the ABCC, Forestry, Lottery, Contractors Licensing Board, Tax and Revenue, etc.

Another problem that we have with the requirements of the Violators List is that we do not maintain or are we required to obtain the ownership interests of employers who maintain an account with the Unemployment Compensation Division. We believe that the Default List serves the intended purpose for compliance when interacting with other agencies.

We also do not believe that the Department of Tax and Revenue has revoked the licenses of the number of employers which they claim as many of the employers which we referred to them continue to operate and file quarterly reports with our division. It is possible that they continue to operate without a business license. Nevertheless, we have reopened communication with Tax and Revenue to work with them to bring these delinquent employers in compliance.

Conclusion

We agree that the legislature should consider structural changes to the tax rate schedules to alleviate the problem of debit balance employers abusing the system and effecting the solvency of the trust fund as is the current problem. However, we do not feel that this is a short term solution to the trust fund solvency problem.

Recommendations

We agree generally with the recommendations issued but we believe that the Default data base currently in existence meets the goals discussed in regards to the Employer Violator System.

Possible Assessments on Employees and Employers Are Short-term Solutions to Avert Insolvency

We agree that such assessments would help prevent trust fund insolvency during economic downturns in the short term and could be triggered on and off based on trust fund balances to avoid permanent tax increases.

WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

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