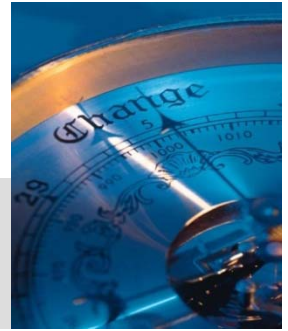


# SERVICE BULLETIN

## Retroactive Increases in Taxable Wage Limitations in the States of West Virginia and Tennessee



*TO:* T&T Clients  
*FROM:* Josh Kendall  
*RE:* Retroactive Increases in Taxable Wage Limitations,  
West Virginia and Tennessee  
*DATE:* June 30, 2009

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One way to generate more UI tax revenue is to increase the state unemployment taxable wage base. West Virginia and Tennessee have both recently enacted legislation which retroactively increases their wage bases, which is uncommon. Because of the need to shore up the state unemployment trust funds, we anticipate that several more states will increase their wage bases for next year (Arkansas, Indiana, and Florida have already done so).

Last month West Virginia law was changed to increase the state unemployment taxable wage base from \$8,000 to \$12,000 retroactively to January 1, 2009. This constitutes a 50% tax increase on wages paid to employees whose annual earnings equal or exceed \$12,000. The West Virginia Unemployment Compensation Division advises that you should adjust your wage and contribution reports (and tax payments) for the second quarter to make up for any under-reporting for the first quarter.

Similarly, Tennessee law has now been amended to increase the state unemployment taxable wage base from \$7,000 to \$9,000 retroactively to January 1, 2009. This constitutes a 28.5% tax increase on wages paid to employees whose annual earnings equal or exceed \$9,000. Tennessee advises that you may adjust your second quarter reports to compensate for any under-reporting for the first quarter, or you may amend your first quarter reports.

Both the West Virginia and Tennessee amendments contain provisions to reduce the taxable wage base in the future if the state trust fund balance reaches a certain threshold. It appears to us that any such reduction is at least three years away.

The Tennessee legislation also increases all premium (tax) rates based on experience by 0.60% retroactively to January 1, 2009, and you will receive a statement showing the additional balance due for the first quarter. The 0.60% additional tax will remain in effect until the Tennessee Unemployment Trust Fund balance equals or exceeds \$650 million, which we expect will take at least three years.

The new-employer tax rate for non-construction employers in Tennessee will remain at 2.70% and will not be subject to the 0.60% additional tax. However, the tax rate for new construction employers is impacted, and increases from 5.00% to 5.60%.

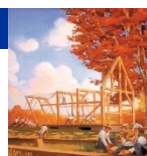
Employers with low tax rates, who arguably have contributed the least to job losses, are impacted the most by the Tennessee legislation. A Tennessee employer who was assigned a 1.10% tax rate prior to the legislation will now pay \$153 per employee annually rather than \$77 (a 99% tax increase).



Thomas & Thorngren, Inc.

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<http://www.thomasandthorngren.com>



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**...continued**

Both the West Virginia and Tennessee amendments provide for an alternative base period. This allows more claimants to qualify for benefits when their wage history is too recent for them to qualify otherwise. The alternative base period is one of the requirements for a state to receive its share of the \$7 billion in available federal incentive payments. Many additional states have UI legislation pending to expand UI eligibility and cash in on the federal funds.

The Tennessee legislation also liberalizes unemployment benefits by authorizing dependant allowances (\$15 per week, per dependent, to a maximum of \$50 per week) and authorizing unemployment benefits for individuals seeking part-time work if such work is for a minimum of 20 hours per week.

By establishing the alternative base period and the dependent allowances, Tennessee expects to qualify for \$141 million in one-time federal funds. However, the cost of the permanent increase in unemployment benefits is expected to be \$29.5 million per year. In other words, the federal funds are expected to subsidize the increased benefits for only 4.8 years, after which Tennessee employers will shoulder the additional burden.

Following are news releases from both states. As always, please contact us at (615) 242-8246 if there are any questions.

**-end-**



**Thomas & Thorngren, Inc.**

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May 18, 2009

THOMAS AND THORNGREN INC  
P O BOX 280100  
NASHVILLE TN 37228-0100



TO ALL EMPLOYERS:

The West Virginia Legislature, meeting in regular session, passed Senate Bill 246 which amended the West Virginia Unemployment Compensation Law. Governor Manchin has signed this bill into law.

21A-1A-5. Base period; alternative base period.

The definition of "alternative base period" was added, which reads: "Alternative base period" means the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

21A-1A-6. Base period employer; alternative base period employer.

Added "alternative base period employer" to the definition.

21A-1A-7. Base period wages; alternative base period wages.

Added "alternative base period wages" to the definition.

21A-1A-28. Wages; average annual wage; threshold wage.

This amendment changed the definition of wages to include that part of remuneration equal to \$12,000 per calendar year per employee. This increases the taxable wage base from \$8,000 per employee to \$12,000. It also, states that the threshold wage will be reduced to \$9,000 when the Unemployment Compensation Trust Fund reaches \$220 million and sets the calculation for the threshold wage for each year thereafter.

If you have already filed your first quarter 2009 wage and contribution reports and your employee(s) met the \$8,000 limit in the first quarter, you will need to pay on \$4,000 when you file your second quarter 2009 wage and contribution reports. If your employee(s) did not meet the \$8,000 in the first quarter, you will need to pay until they have reached the \$12,000 taxable wage base.

Contribution Accounting Section  
**Unemployment Compensation Division**  
112 California Avenue, Charleston, West Virginia 25305-0112  
<https://www.workforcewv.org/>

21A-6-1. Eligibility qualifications.

Added language addressing the use of an "alternative base period". An "alternative base period" would only be used if the claimant was not eligible for benefits in the "base period".

21A-6-3. Disqualification for benefits.

This amendment changed misconduct to gross misconduct and added language pertaining to drug use without a valid prescription, manipulating a sample for a drug or alcohol test or refusing to submit to random drug testing for alcohol or illegal controlled substances for employees in safety sensitive positions.

This amendment also disqualifies an individual from receiving unemployment benefits if they accepted an early retirement incentive package except in certain circumstances.

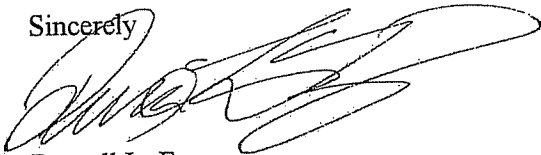
21A-6-10. Benefit rate - Total Unemployment; annual computation and publication of rates.

This amendment freezes the present level of unemployment benefits until the threshold wage is reduced to \$9,000.

Statements in this letter are intended for general information and do not have the effect of law or regulation.

Questions concerning assessments and contributions may be addressed to Mr. Wade Wolfingbarger, Assistant Director, Contribution Accounting, 112 California Avenue, Charleston, WV 25305; or by calling Accounts Receivable Unit (304) 558-2676; or Contribution Accounting (304) 558-2675.

Sincerely



Russell L. Fry  
Acting Executive Director

RLF/WW/ks



STATE OF TENNESSEE

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

PHIL BREDESEN  
GOVERNOR

220 French Landing Drive  
Nashville, TN 37243  
(615) 741-2486

JAMES G. NEELEY  
COMMISSIONER

June 26, 2009

Dear Employer:

The Tennessee General Assembly recently passed into law HB 2324/SB 2315. The legislation is intended to prevent our state's Unemployment Insurance Compensation Trust Fund from becoming insolvent as well as to avoid the necessity of our state having to borrow funds from the federal government in order to continue paying benefits to our unemployed citizens. At the same time, in order to accomplish that goal, the legislation requires additional contributions from Tennessee employers.

The Fund has moved dangerously close to becoming insolvent, an event that could have occurred as soon as this year or by early 2010 at the latest. This situation was brought about by today's record number of claims for unemployment insurance benefits coupled with an unemployment taxing system that, prior to the passage of this legislation, had not been updated to meet the demands of our modern economy in over 25 years.

The legislation increases Tennessee's taxable wage base from its current \$7,000 limit to \$9,000. This change is effective January 1, 2009, meaning all wages paid in the current year (including those previously reported for the first quarter) are subject to the \$9,000 taxable wage base. Our agency will be relying on you, the employer, to inform us of the taxable portion of your employees' wages. We ask that you report any additional taxable wages (those over \$7,000) from your previously filed first quarter 2009 premium report as additional year-to-date *taxable* wages on line 3 of your second quarter premium report, then simply continue with the \$9,000 taxable wage calculation on each employee's earnings for the remainder of the year. If, however, your payroll accounting system prevents you from reporting the additional first quarter taxable wages on your second quarter report, you may file an amended premium report for the first quarter. Please bear in mind that while our state's system of unemployment insurance reporting is by and large based on the voluntary compliance of our employers, an audit system exists whereby errors in the reporting process are discovered and corrected.

In addition, the legislation provides for a temporary additional fee of .6% on all unemployment insurance premium rates on Premium Tables 1, 2, and 3. This provision is likewise effective January 1, 2009. You will soon receive an Employer Statement from our agency for the amount of premium due on the basis of the additional .6% rate applied to the taxable wages you reported for the first quarter 2009.

While our agency genuinely regrets any inconvenience or hardship the provisions of the legislation may place on your business or household, this action will help avoid the need to borrow funds from the federal government and save millions of dollars of interest expense that employers would have to pay. It is now our agency's task to administer and enforce the provisions of the legislation, and I pledge to you that we will do so in as efficient and equitable a manner as possible.

Those legislators that supported this bill should be commended for looking at the bigger picture of the long term cost to the employer community if the Federal Government were to take control of the program.

Sincerely,

James G. Neeley