

## § 606.21

available. Nevertheless, for the purposes of applying section 3302(c)(2) to subsequent taxable years, partial cap credits earned will be taken into account for purposes of determining reduction of tax credits. Also, the taxable year to which the partial cap applied (and January 1 thereof) will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

### § 606.21 Criteria for cap.

(a) *Reduction in unemployment tax effort.* (1) For purposes of paragraph (a)(1) of § 606.20, a reduction in a State's unemployment tax effort will have occurred with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative,) that is effective during the 12-month period ending on September 30 of such taxable year, which has resulted in or will result in a reduction of the amount of contributions paid or payable or the amounts that were or would have been paid or payable but for such action.

(2) Actions that will result in a reduction in tax effort include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable (including surtaxes) that would not have gone into effect but for the legislative, judicial, or administrative action taken. Notwithstanding the foregoing criterion, a reduction in unemployment tax effort resulting from any provision of the State law enacted prior to August 13, 1981, will not be taken into account as a reduction in the State's unemployment tax effort for the purposes of this section.

(b) *Net decrease in solvency.* For purposes of paragraph (a)(2) of § 606.20, a net decrease in the solvency of the State's unemployment compensation system will have occurred with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative), that is effective during the 12-month period ending on September 30 of such taxable year, which has resulted in or will result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits. Notwithstanding the foregoing criterion, a decrease in sol-

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veny resulting from any provision of the State law enacted prior to August 13, 1981, will not be taken into account as a reduction in solvency of the State's unemployment compensation system for the purposes of this section.

(c) *State unemployment tax rate.* For purposes of paragraph (a)(3) of § 606.20, the State unemployment tax rate is defined in § 606.3(j). If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

(d) *State five-year average benefit cost ratio.* For purposes of paragraph (a)(3) of § 606.20, the average benefit cost ratio for the five preceding calendar years is the percentage determined by dividing the sum of the benefit cost ratios for the five years by five. If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

### § 606.22 Application for cap.

(a) *Application.* (1) The Governor of the State shall make application, addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests a cap on tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action occurring after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application.

(2) The UIS Director will make a determination on the application on or before November 10 of such taxable year, will notify the applicant and the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the FEDERAL REGISTER.

(b) *Anticipated impact statement.* In support of the application by the Governor, there shall be submitted with the application (on or before October 15), for the purposes of the criteria described in §§ 606.20(a) (1) and (2) and 606.21 (a) and (b), a description of all statutory provisions enacted or amended, regulations adopted or revised, administrative policies and procedures adopted or revised, and judicial decisions given effect, which are effective during the 12-month period ending on September 30 of the taxable year for