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## CHAPTER 204. CONTRIBUTIONS

### Subchapter A. General Provisions

#### Sec. 204.001. Definition

In this chapter, "**manual**" means the North American Industrial Classification System Manual published by the United States Office of Management and Budget.

#### Sec. 204.002. Contribution Required

- (a) An employer shall pay a contribution on wages for employment paid during a calendar year or the portion of the calendar year in which the employer is subject to this subtitle.
- (b) The contribution shall be paid to the commission in accordance with rules adopted by the commission.

#### Sec. 204.003. Contribution Not Deducted from Wages

An employer may not deduct any part of a contribution from the wages of an individual in the employer's employ.

#### Sec. 204.004. Assignment to Major Group

The commission shall assign each employer to a major group in accordance with the definitions contained in the manual.

#### Sec. 204.005. Establishment of Major Group Contribution Rate

- (a) For each calendar year, the commission shall establish by industry an average contribution rate for each major group.
- (b) The commission shall determine the year's contribution rate for an industry by averaging the contribution rates paid by employers in that industry during the preceding year ending on September 30, as shown by the employment records maintained by the commission.

#### Sec. 204.006. Initial Contribution Rate

- (a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:
  - (1) the rate established for that year for the major group to which the employer is assigned under Section 204.004, less one-tenth of one percent; or
  - (2) two and six-tenths percent.

- (b) A rate established under Subsection (a) applies to the employer until the date the experience rate computed under Section 204.041 takes effect for the employer.

**Sec. 204.007. Special Rate; Certain Employers Engaged in Agriculture**

- (a) This section applies to an employer identified by the commission as classified in the manual as:
  - (1) Number 115114, crop preparation services for market; or
  - (2) Number 115111, cotton ginning.
- (b) An employer subject to this section shall pay a contribution at the lowest of the following rates:
  - (1) five and four-tenths percent;
  - (2) the general tax rate applicable to that employer, with the deficit tax rate and replenishment tax rate; or
  - (3) any other tax rate applicable to that employer under this subtitle.

**Sec. 204.008. Time Benefits Are Paid**

For the purpose of this chapter, benefits are paid at the time the claim for the benefits is certified by the commission to the comptroller for payment.

**Sec. 204.009. Application to Labor Agent**

- (a) A labor agent who furnishes a farm and ranch laborer is liable for the payment of a tax under this subtitle as if the labor agent were the employer of the laborer, without regard to any factor used to determine an employer-employee relationship, including the right of control.
- (b) If a labor agent does not pay the tax in accordance with this subtitle, a person who contracts with the labor agent for the services of a farm and ranch laborer is jointly and severally liable with the labor agent for payment of the tax under this subtitle as an employer.
- (c) A labor agent shall notify each person with whom the labor agent contracts whether the labor agent pays the tax under this subtitle.
- (d) A labor agent who pays the tax shall present evidence of payment to each person with whom the labor agent contracts.
- (e) In this section, "**labor agent**" means a person who is a farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.).

### **Sec. 204.010. Payment of Contributions by Indian Tribes**

An Indian tribe that is subject to this subtitle shall pay contributions under the same terms and conditions as any other subject employer unless the Indian tribe elects under Chapter 205 to make reimbursements for benefits instead of contributions.

## **Subchapter B. Chargebacks**

### **Sec. 204.021. Chargebacks**

- (a) The amount of benefits paid to a claimant for a benefit year shall be charged to the accounts of each of the claimant's employers during the claimant's base period. The chargebacks of an employer for a calendar quarter are the benefits paid to all of the employer's employees or former employees during that quarter.
- (b) The chargeback of benefits of a claimant who has two or more employers during the claimant's base period is allocated among those employers according to the proportion of the total of the claimant's benefit wage credits paid during the base period by each employer.

### **Sec. 204.022. Exclusions from Chargebacks**

- (a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year:
  - (1) was required by a federal statute;
  - (2) was required by a statute of this state or an ordinance of a municipality of this state;
  - (3) would have disqualified the employee under Section 207.044, 207.045, 207.051, or 207.053 if the employment had been the employee's last work;
  - (4) imposes a disqualification under Section 207.044, 207.045, 207.051, or 207.053;
  - (5) was caused by a medically verifiable illness of the employee or the employee's minor child;
  - (6) was based on a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;

- (4) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment;
- (5) was based on a disaster that results in a disaster declaration by the governor under Section 418.014, Government Code;
- (9) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage;
- (10) was caused by the employer being called to active military service in any branch of the United States armed forces on or after January 1, 2003;
- (11) resulted from the employee leaving the employee's workplace to protect the employee from family violence or stalking or the employee or a member of the employee's immediate family from violence related to a sexual assault as evidenced by:
  - (A) an active or recently issued protective order documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee or the potential for family violence against, or the stalking of, the employee;
  - (B) a police record documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee;
  - (C) a physician's statement or other medical documentation that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee that:
    - (i) is recorded in any form or medium that identifies the employee or member of the employee's family, as applicable, as the patient; and
    - (ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or
  - (D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee;
- (12) resulted from a move from the area of the employee's employment that:
  - (A) was made with the employee's spouse who is a member of the armed forces of the United States; and

- (B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year;
  - (13) was caused by the employee being unable to perform the work as a result of a disability for which the employee is receiving disability insurance benefits under 42 U.S.C. Section 423;
  - (14) resulted from the employee leaving the employee's workplace to care for the employee's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available;
  - (15) was caused by the employer's reinstatement of a qualified uniformed service member with reemployment rights and benefits and other employment benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.); or
  - (16) was due to a reason that:
    - (A) constitutes an involuntary separation under Section 207.046(a)(1); and
    - (B) does not constitute good cause connected with the employee's work under Section 207.045 for the employee to voluntarily leave the employment.
- (a-1) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if:
- (1) the employment did not constitute suitable work for the employee, as determined under Section 207.008; and
  - (2) the employee worked for the employer for less than four weeks.
- (a-2) Benefits computed on benefit wage credits of an employee may not be charged to the account of an employer if the employee continued to work the employee's customary hours for the employer when the employee's benefit year began. This subsection does not apply to a claim for unemployment benefits made under Chapter 215.
- (b) For the purpose of this section, if an employee's last separation from the employment of an employer is a separation for which the employee was determined to have been disqualified under Section 207.048, the employee's last separation from the employment of that employer is considered to be the next later separation from the employment of that employer.
- (c) Except as provided by law, evidence regarding an employee described by Subsection (a)(11) may not be disclosed to any person without the consent of the employee.
- (d) For purposes of Subsection (a)(11):

- (1) **"Family violence"** has the meaning assigned by Section 71.004, Family Code.
  - (2) **"Stalking"** means conduct described by Section 42.072, Penal Code.
  - (3) **"Immediate family"** means an individual's parent, spouse, or child under the age of 18.
  - (4) **"Sexual assault"** means conduct described by Section 22.011 or 22.021, Penal Code.
  - (5) **"Family violence center"** has the meaning assigned by Section 51.002, Human Resources Code.
- (e) Benefits may not be charged to the account of an employer, regardless of whether the liability for the chargeback arises in the employee's current benefit year or in a subsequent benefit year, if the employee's last separation from the employer's employment before the employee's benefit year was or would have been excepted from disqualification under Section 207.023(b)(2) or 207.045(j).
- (f) Shared work benefits paid under Chapter 215 may not be charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012 (Pub. L. No. 112-96, Subtitle D, Title II).

**Sec. 204.023. Notice Sent at Time Benefits Paid**

The commission shall mail to an employer a notice of the employer's maximum potential chargebacks when benefits are first paid if:

- (1) notice of an initial claim has not already been mailed to the employer under Section 208.002; and
- (2) the employer's account is potentially chargeable with benefits as a result of the initial claim and payment of benefits.

**Sec. 204.024. Protest of Potential Chargebacks**

To protest a potential chargeback, an employer to whom notice is mailed under Section 204.023 must mail to the commission at Austin a protest not later than the 30th day after the date the notice was mailed or the right to protest the chargeback is waived. The protest must include a statement of the facts supporting the grounds of the protest.

**Sec. 204.025. Decision and Administrative Review of Protest**

- (a) An examiner promptly shall decide the issues involved in a timely protest filed under Section 204.024 and shall mail a notice of the decision to the protesting employer.

- (b) The examiner's decision becomes final 14 days from the date the examiner mails the notice unless before that date the employer mails to the commission at Austin a written appeal from the examiner's decision.
- (c) Administrative review under this section must be in accordance with the rules of the commission.

**Sec. 204.026. Judicial Review of Protest**

- (a) An employer may appeal an administrative determination made under Section 204.025 after the employer has exhausted the employer's administrative remedies, not including a motion for rehearing, before the commission. An appeal must be filed within the time prescribed by Sections 212.153 and 212.201 for commission decisions on benefits.
- (b) An appeal to a court relating to a chargeback has the same venue and jurisdiction as a suit to collect contributions and penalties under this subtitle.

**Sec. 204.027. Notice, Protest, and Appeal; Notice Sent at Time of Claim**

- (a) If notice of the claim was sent to an employer under Section 208.002, the commission shall mail the employer a notice of the employer's potential chargeback resulting from the claim.
- (b) The employer may protest a clerical or machine error relating to the amount of the chargeback not later than the 14th day after the date the notice was mailed.
- (c) The commission shall mail a decision on the protest to the employer.
- (d) An employer may appeal the decision on the protest not later than the 14th day after the date notice of the decision is mailed to the employer.

**Subchapter C. General Tax Rate for Experience-Rated Employers**

**Sec. 204.041. Tax on Experience-Rated Employers**

- (a) Each employer whose account has been chargeable with benefits throughout four or more consecutive calendar quarters shall pay contributions at the rate prescribed by the table in Section 204.042 or a table extended under Section 204.043.
- (b) Except as provided by Subsection (c), a change in the rate applicable to an employer takes effect on January 1.
- (c) The rate for an employer who becomes subject to contributions under Subsection (a) for the first time at the close of a calendar quarter takes effect on the first day of the next calendar quarter and continues in effect until the January 1 of the next calendar year.

**Sec. 204.042. Tax Rate Table**

If the replenishment is:		And the employer's benefit ratio does not exceed:									
1.00		0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90
...											
1.20		0.00	0.08	0.16	0.25	0.33	0.41	0.50	0.58	0.66	0.75
1.21		0.00	0.08	0.16	0.24	0.33	0.41	0.49	0.57	0.66	0.74
1.22		0.00	0.08	0.16	0.24	0.32	0.40	0.49	0.57	0.65	0.73
1.23		0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.65	0.73
1.24		0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.25		0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.26		0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.63	0.71
1.27		0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.62	0.70
1.28		0.00	0.07	0.15	0.23	0.31	0.39	0.46	0.54	0.62	0.70
1.29		0.00	0.07	0.15	0.23	0.31	0.38	0.46	0.54	0.62	0.69
1.30		0.00	0.07	0.15	0.23	0.30	0.38	0.46	0.53	0.61	0.69
1.31		0.00	0.07	0.15	0.22	0.30	0.38	0.45	0.53	0.61	0.68
1.32		0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.68
1.33		0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.67
1.34		0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.52	0.59	0.67
1.35		0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.51	0.59	0.66
1.36		0.00	0.07	0.14	0.22	0.29	0.36	0.44	0.51	0.58	0.66
1.37		0.00	0.07	0.14	0.21	0.29	0.36	0.43	0.51	0.58	0.65
1.38		0.00	0.07	0.14	0.21	0.28	0.36	0.43	0.50	0.57	0.65
1.39		0.00	0.07	0.14	0.21	0.28	0.35	0.43	0.50	0.57	0.64
1.40		0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.50	0.57	0.64
1.41		0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.42		0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.43		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.44		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.45		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.46		0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.47	0.54	0.62
1.47		0.00	0.06	0.13	0.20	0.27	0.34	0.40	0.47	0.54	0.61
1.48		0.00	0.06	0.13	0.20	0.27	0.33	0.40	0.47	0.54	0.60
1.49		0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.50		0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.51		0.00	0.06	0.13	0.19	0.26	0.33	0.39	0.46	0.52	0.59
1.52		0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.46	0.52	0.59
1.53		0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.45	0.52	0.58
1.54		0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.55		0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.56		0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.44	0.51	0.57
1.57		0.00	0.06	0.12	0.19	0.25	0.31	0.38	0.44	0.50	0.57
1.58		0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.59		0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.60		0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.43	0.50	0.56

Then the employer's tax rate is:											
		0.00%	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%

**Sec. 204.043. Extension of Tax Rate Table Up to Six Percent**

- (a) The commission shall extend the table in Section 204.042 by providing additional replenishment ratios, benefit ratios, and tax rates up to six percent.
- (b) In extending the table in Section 204.042, the commission shall use the same mathematical principles used in constructing the table.

**Sec. 204.044. Benefit Ratio**

- (a) The benefit ratio for an employer is equal to the total amounts of the employer's chargebacks for the 36 consecutive months preceding the tax rate computation date divided by the total of the employer's taxable wages for the same months.
- (b) The benefit ratio of an employer whose account has been chargeable with benefits for less than 36 consecutive months but throughout each month of at least four calendar quarters is equal to the total amount of the employer's chargebacks for those months preceding the tax rate computation date divided by the total of the employer's taxable wages for those months.
- (c) In computing the benefit ratio, only taxable wages on which contributions have been paid to the commission not later than the last day of the month in which the computation date occurs may be used.
- (d) In computing the benefit ratio for employers who are subject only to Section 201.027 and who have elected under that section to file reports annually, only taxable wages for which contributions have been paid to the commission on or before January 31 may be used.
- (e) The benefit ratio is expressed as a percentage.

**Sec. 204.045. Replenishment Ratio**

- (a) The replenishment ratio for a calendar year is computed by:
  - (1) dividing the numerator described in Subsection (b) by the denominator described in Subsection (c); and
  - (2) rounding the result to the nearest hundredth.
- (b) The numerator is equal to the amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts, plus one-half of the amount of benefits paid during that period that are not effectively charged to employers' accounts. In computing the amount of benefits charged or paid, the commission shall not include the amount of:
  - (1) a canceled benefit warrant;

- (2) that part of a benefit that has been overpaid and been repaid; or
  - (3) benefits paid that are repayable from a reimbursing employer, the federal government, or another governmental entity.
- (c) The denominator is the total amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts.
- (d) The commission shall compute the replenishment ratio for each calendar year before the date the first contribution payment with respect to wages for employment paid in that year is due. Once computed for the year, the replenishment ratio may not be adjusted.

**Sec. 204.046. Effectively Charged Benefits**

- (a) A benefit is not effectively charged if it is:
- (1) not charged to an employer's account;
  - (2) charged to an employer's account after the employer has reached maximum liability because of the maximum tax rate; or
  - (3) charged to an employer's account but considered not collectible.
- (b) A benefit not described in Subsection (a) is effectively charged.

**Sec. 204.047. Tax Rate Computation Date for Experience Tax Rate**

- (a) The computation date for the tax rate for the contribution under Section 204.041 is October 1 of the year preceding the calendar year for which the rate takes effect, except as provided by Subsections (b) and (c).
- (b) The computation date for the tax rate for the contribution under Section 204.041(a) for an employer who becomes subject to that tax rate for the first time is the date on which the rate takes effect under Section 204.041(c).
- (c) An employer who reports annually under Section 201.027 has the same computation date as other employers, but the final computation of a rate for the employer may not occur before February 1 of the year following the computation date.

**Sec. 204.048. Voluntary Contributions**

- (a) Notwithstanding any other provision of this subtitle, an employer for whom the commission has computed an experience rate as of October 1 of a calendar year that is effective for the succeeding calendar year, as provided by Section 204.047(a), may elect to make a voluntary payment of contributions to the commission.

- (b) The amount of a voluntary contribution may be equal to all or part of the employer's chargebacks during the period ending September 30 that are used in computing the employer's experience rate for the succeeding calendar year. The commission shall allocate a voluntary contribution of less than the full amount of the employer's chargebacks first to the employer's most recent chargebacks.
- (c) On receipt of a voluntary contribution during the period prescribed by Subsection (d), the commission shall reduce the employer's chargebacks by an amount equal to the contribution and shall recompute the experience rate applicable to that employer for the succeeding calendar year.
- (d) An employer who elects to make a voluntary contribution for the recomputation of the employer's experience rate must make the contribution as prescribed by rules adopted by the commission. The employer may not revoke the contribution after the date on which the commission uses the contribution to recompute the employer's experience rate.
- (e) Notwithstanding Subsection (a), the commission may not compute a new experience rate for an employer or reduce an employer's experience rate based on a voluntary contribution made by the employer after the expiration of the 120th day of the calendar year for which the rate is effective.
- (f) The commission shall deposit a voluntary contribution made under this section to the credit of the compensation fund.

## **Subchapter D. Adjustments to Tax Rate for Experience-Rated Employers**

### **Sec. 204.061. Ceiling and Floor of Compensation Fund**

In computing the tax rates under this subchapter:

- (1) the ceiling of the compensation fund is two percent of the total taxable wages for the four calendar quarters ending the preceding June 30; and
- (2) the floor of the compensation fund is equal to the greater of:
  - (A) \$400 million; or
  - (B) one percent of the total taxable wages for the four calendar quarters ending the preceding June 30.

### **Sec. 204.062. Replenishment Tax**

- (a) In addition to the general tax computed under Subchapter C, an employer entitled to an experience rate shall pay a replenishment tax at the rate computed by:

- (1) dividing the numerator described by Subsection (b) by the denominator described by Subsection (c);
  - (2) multiplying that result by 100 to obtain a percentage; and
  - (3) rounding that result to the nearest hundredth.
- (b) The numerator is an amount equal to one-half of the amount of benefits paid by all employers during the 12 months ending the preceding September 30 that are not effectively charged.
- (c) The denominator is an amount equal to the taxable wages paid by all employers during the four quarters ending the preceding June 30.

**Sec. 204.0625. Adjustment to Replenishment Tax Rate**

On and after January 1, 2006, the replenishment tax rate computed under Section 204.062 shall be adjusted to a rate computed by subtracting one-tenth of one percent from the percentage computed under Section 204.062(a).

**Sec. 204.063. Deficit Assessment**

- (a) If the amount of money in the compensation fund on a tax rate computation date is less than the floor of the compensation fund, a deficit tax rate is added for the next calendar year to the general tax rate for each employer entitled to an experience rate for that year.
- (b) The deficit tax rate for a calendar year is the lesser of:
- (1) the rate computed by multiplying the deficit ratio, as computed under Section 204.064, by the sum of the employer's general tax rate, the replenishment tax rate, and the deficit tax rate for the previous calendar year; or
  - (2) two percent.

**Sec. 204.064. Deficit Ratio**

- (a) The deficit ratio is computed by:
- (1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and
  - (2) rounding that result to the nearest hundredth.
- (b) The numerator is computed by subtracting the balance of the compensation fund, considering any federal advance, from the floor of the compensation fund.

- (c) The denominator is the amount of contributions due under the general tax rate and the replenishment rate for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

**Sec. 204.065. Use of Surplus**

- (a) If the amount in the compensation fund on a tax rate computation date is more than the ceiling of the compensation fund, the commission may use all or part of that surplus to pay outstanding bond obligations as provided by this section or to provide a surplus credit or a surplus credit rate as provided by Sections 204.0651 and 204.0652 to an employer entitled to an experience rate on the computation date.
- (b) If, on the tax rate computation date, there are outstanding bond obligations as described by Subchapter C, Chapter 203, including bond administrative expenses, the commission may transfer all or part of the surplus described by Subsection (a) to the obligation trust fund under Section 203.102 for payment of those obligations. The amount transferred under this subsection may not exceed any amount transferred to the unemployment compensation fund under Section 203.255(b)(2).
- (c) To the extent that any portion of the surplus is not used to pay bond obligations, the commission shall use that amount to compute:
  - (1) a surplus credit under Section 204.0651; or
  - (2) an annual surplus credit rate under Section 205.0652.
- (d) In determining the use of any surplus, the commission shall exercise the options that the commission determines to be in the best interests of the state's employers and workers.

**Sec. 204.0651. Surplus Credit**

- (a) The commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute a surplus credit for an employer entitled to an experience rate on the computation date, to be applied beginning with contributions for the first quarter of the following year.
- (b) The amount of the surplus credit is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's contributions due for the four calendar quarters ending the preceding September 30.
- (c) An employer may not apply a surplus credit against delinquent contributions. A surplus credit may not be applied until the employer has paid any delinquent contributions.

#### **Sec. 204.0652. Surplus Credit Rate**

- (a) If the commission does not compute a surplus credit under Section 204.0651, the commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute an annual surplus credit rate for an employer entitled to an experience rate on the computation date.
- (b) The surplus credit rate is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's general and replenishment tax rates for the preceding year.
- (c) The surplus credit rate shall be subtracted from the sum of the general and replenishment tax rates. The remainder may not be less than zero. The results shall be rounded to the nearest hundredth.
- (d) An employer may not receive a surplus credit rate if any delinquent contributions are due on the computation date, but is eligible for a surplus credit rate beginning on the calendar quarter following the quarter in which the delinquent contributions are paid.

#### **Sec. 204.066. Surplus Ratio**

- (a) The surplus ratio is computed by:
  - (1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and
  - (2) rounding that result to the nearest hundredth.
- (b) The numerator is computed by subtracting the ceiling of the compensation fund from the balance of the compensation fund and subtracting from that amount any amount used to pay bond obligations under Section 204.065(b).
- (c) The denominator is the amount of contributions due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

#### **Sec. 204.067. Adjustments to Rate**

The commission, at its own discretion, may adjust a rate under this subchapter.

### **Subchapter E. Acquisition of Experience-Rated Employer**

#### **Sec. 204.081. Definitions**

- (a) In this subchapter:

- (1) **"Compensation experience"** includes the period that benefit wage credits or benefits have been chargeable and any other factor under Subchapter A, B, C, or D necessary to the computation of experience rating under those subchapters.
  - (2) **"Person"** means an individual, trust, estate, partnership, association, company, or corporation.
  - (3) **"Substantially common management or control"** exists if, after the acquisition of the organization, trade, or business of an employing unit, the predecessor employing unit continues to:
    - (A) own or manage the organization that conducts the organization, trade, or business;
    - (B) own or manage the assets necessary to conduct the organization, trade, or business;
    - (C) control through security or lease arrangements the assets necessary to conduct the organization, trade, or business; or
    - (D) direct the internal affairs or conduct of the organization, trade, or business.
  - (4) **"Substantially common ownership"** exists if, on the date of an acquisition of the organization, trade, or business of an employing unit, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employing unit, or the spouse or a person within the first degree of consanguinity or affinity, as determined under Chapter 573, Government Code, of the shareholder, officer, or other owner:
    - (A) is a shareholder, officer, or other owner of a legal or equitable interest in the successor employing unit; or
    - (B) holds an option to purchase a legal or equitable interest in the successor employing unit.
  - (5) **"Transfer of trade or business"** includes the transfer of part or all of an employer's workforce to another employer if, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and the employer to whom the workforce is transferred performs trade or business with respect to the workforce.
  - (6) **"Knowingly"** means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.
- (b) For purposes of Subsection (a)(4), following a partial acquisition of an organization, trade, or business of an employing unit, substantially common ownership does not exist solely

because the predecessor employing unit has the right to repossess the part acquired by the successor employing unit in the event of the successor's failure to complete a condition of the acquisition.

**Sec. 204.082. Effective Date of Acquisition**

For purposes of this subchapter, an acquisition is effective on the first day of the calendar quarter in which the acquisition occurs.

**Sec. 204.083. Acquisition of All or Part of Experience-Rated Organization, Trade, or Business; Transfer of Compensation Experience**

The transfer of the predecessor employer's compensation experience to the successor employer is required if the predecessor employing unit transfers, through any means, all or part of the organization, trade, or business, to the successor employer and there is substantially common management or control or substantially common ownership of the entities.

**Sec. 204.084. Acquisition of Part of Experience-Rated Organization, Trade, or Business; Approval of Transfer of Compensation Experience without Substantially Common Management or Control or Substantially Common Ownership; Contribution Rate**

- (a) If an employing unit acquires or otherwise receives, through any means, part of the organization, trade, or business of an employer, and transfer of compensation experience is not required by Section 204.083, the successor employing unit and the predecessor employer may jointly make a written application to the commission to transfer the compensation experience of the predecessor employer that is attributable to the part of the organization, trade, or business acquired to the successor employing unit.
- (b) If the acquisition results from the death of the predecessor employer, the requirement that the predecessor employer join in the application for transfer of the compensation experience does not apply.
- (c) Except as provided by Subsection (d), the commission shall approve an application if:
  - (1) immediately after the acquisition the successor employing unit continues operation of substantially the same part of the organization, trade, or business acquired;
  - (2) the predecessor employer waives in writing all rights to an experience rating computed on the compensation experience attributable to the part of the organization, trade, or business acquired by the successor employing unit, unless the acquisition results from the death of the predecessor employer;
  - (3) a definitely identifiable and segregable part of the predecessor employer's compensation experience is attributable to the part of the organization, trade, or business acquired; and

- (4) for a successor employing unit that is not an employer at the time of the acquisition, the successor employing unit elects to become an employer on the date of the acquisition or otherwise becomes an employer during the year in which the acquisition occurs;
  - (5) the application was filed with the commission not later than the first anniversary of the effective date of the acquisition; and
  - (6) the applicants have shown that:
    - (A) the acquired part of the organization, trade, or business is capable of operating independently and separately from the predecessor employer; and
    - (B) the wages attributable to the acquired part of the organization, trade, or business are solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.
- (d) The commission shall deny a transfer of compensation experience under this section if the commission determines that the transfer was done primarily to qualify for a reduced compensation experience rating by either:
- (1) circumventing the experience rating system; or
  - (2) manipulating the experience rating system by minimizing the impact of chargebacks to the predecessor's or successor's tax account.
- (e) A successor employing unit that acquires compensation experience under this section and that is an experience-rated employer on the date of and during the period preceding the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor employing unit on the date of acquisition.
- (f) A successor employing unit that acquires compensation experience under this section and that is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the next contribution rate computation date at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition. If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor employing unit's contribution rate must be determined under Section 204.006.

**Sec. 204.085. Contribution Rate for Successor Employers When Substantially Common Management or Control or Substantially Common Ownership Exists; Certain Partial Acquisitions**

- (a) Except as provided by Subsection (d), in the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, if the commission determines that the part of the organization, trade, or business transferred is definitely identifiable and segregable and that compensation experience can be specifically attributed to that part of the organization, trade or business, the contribution rate of the successor must be computed:
  - (1) based on the successor employing unit's experience for the part of the organization, trade, or business that was not acquired by the transfer; and
  - (2) as provided by this section for the part of the organization, trade, or business acquired through the transfer.
- (a-1) In the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, the predecessor employer and successor employer may jointly submit, not later than the second anniversary of the date the partial acquisition was completed, information necessary for making the determination described by Subsection (a). The period for which the information is submitted must be the lesser of:
  - (1) four years; or
  - (2) the length of time the predecessor employer was liable for the payment of a tax under this subtitle.
- (b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at a rate computed by using the compensation experience transferred from the predecessor employer and that of the successor employing unit.
- (c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.
- (d) If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor's contribution rate must be determined under Section 204.006.

- (e) The commission shall include information about the availability of a partial transfer of compensation experience under this subchapter:
  - (1) with the information provided by the commission to each new employer; and
  - (2) on any form, including in electronic format, required to be submitted by an employer to report a change of status.

**Sec. 204.0851. Contribution Rate for Successor Employers When Substantially Common Management or Control or Substantially Common Ownership Exists; Other Acquisitions.**

- (a) For a transfer of compensation experience required by Section 204.083 other than a transfer described by Section 204.085(a), the contribution rate shall be computed as provided by this section.
- (b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate computed by using the prior 36-month combined compensation experience of the predecessor employing unit and the successor employing unit on the date of the acquisition.
- (c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition.
- (d) The contribution rate for experience-rated and nonexperience-rated successor employing units shall, for the years following the year of acquisition, be computed as follows:
  - (1) for the first year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 24-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;
  - (2) for the second year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 12-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;
  - (3) for the third year following acquisition, compensation experience available to the successor employing unit plus the predecessor employing unit's compensation

experience from September 30 preceding the year of acquisition to the date of the acquisition; and

- (4) for years subsequent to the acquisition and to the transfer of compensation experience required under Section 204.083, the predecessor employing unit's contribution rate is computed without regard to any transfer of compensation experience required by that section.

**Sec. 204.086. Collection of Contribution, Penalty, or Interest from Successor Employer**

- (a) An individual or employing unit that acquires the organization, trade, or business or substantially all of the assets of an organization, trade, or business of an employer who, at the time of the acquisition, is indebted to the commission for a contribution, a penalty, or interest, is liable to the commission for prompt payment of the contribution, penalty, or interest.
- (b) If not paid, the commission may bring an action under Chapter 213 for the collection of a contribution, a penalty, or interest as though the contribution, penalty, or interest had been incurred by the successor employer.

**Sec. 204.0861. Surplus Credit for Successor Employing Units**

- (a) In this section, "surplus credit" means a credit described by Section 204.0651.
- (b) A successor employing unit to which compensation experience is transferred under Section 204.083 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit.
- (c) A successor employing unit to which compensation experience is transferred under Section 204.084 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit if the commission determines that the requirement described by Section 204.084(c)(3) is satisfied.
- (d) If the commission determines that a transfer of compensation experience was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, a successor employing unit is not entitled to, and may not apply or receive, a surplus credit under Subsection (b) or (c).
- (e) A predecessor employing unit is not entitled to, and may not apply or receive, all or any portion of a surplus credit that is based on compensation experience that is transferred to a successor employing unit under this subchapter.
- (f) The commission shall adopt rules necessary to implement and enforce this section, including rules that ensure that only a successor employing unit applies or receives all or part of a surplus credit previously attributable to a predecessor employing unit.

**Sec. 204.087. Offense; Criminal and Civil Penalties**

- (a) A person commits an offense if the person recklessly, knowingly, or intentionally defeats, evades, or circumvents a provision of this subchapter or if the person recklessly, knowingly, or intentionally attempts, aids and abets an attempt, or advises another to defeat, evade, or circumvent a provision of this subchapter.
- (b) An employer who commits an offense under this section may be assessed a civil penalty in an amount equal to two percent of wages as defined in Subchapter F, Chapter 201, for the year during which the violation occurred and for the three years following that year.
- (c) A person, other than the employer, who commits an offense under this section may be assessed a civil penalty of not more than \$5,000 for a first offense and not more than \$5,000 for each subsequent offense.
- (d) A civil penalty assessed under Subsection (b) and (c) shall be deposited in the special administration fund established under Section 203.201.
- (e) An offense under this section is a Class A misdemeanor.

**Sec. 204.088. Procedures to Identify Experience-Rating Transfers**

The commission by rule shall establish procedures to identify the transfer or acquisition of a business for the purposes of this subchapter.

**Sec. 204.089. Conformity with Federal Regulations**

The commission shall administer this subchapter in conformity with any regulations prescribed by the United States Secretary of Labor relating to experience-rating transfers.

**Subchapter F. Special Contributions for Governmental Employers**

**Sec. 204.101. Contribution from Governmental Employer**

A governmental employer shall pay a contribution in accordance with this subchapter and rules adopted by the commission on wages paid for employment during each year or portion of the year in which the governmental employer is subject to this subtitle.

**Sec. 204.102. Contribution Not Deduction from Wages**

A contribution paid by a governmental employer may not be deducted from the wages of individuals in the employer's employ.

**Sec. 204.103. Rate of Contributions for Governmental Employers**

- (a) The rate of the contribution required under Section 204.101 for each calendar year is equal to the greater of:
  - (1) one-tenth of one percent; or
  - (2) the percentage, adjusted to the next higher one-tenth of one percent, computed by dividing the numerator described by Subsection (b) by the denominator described by Subsection (c).
- (b) The numerator is the amount of all benefits paid during the preceding calendar year based on wage credits earned from employers that pay contributions under this subchapter, not including benefit payments that are reimbursable from any other source. If the amount of benefits paid during the period used for determining the rate is greater than the contributions paid by the same employers for the same period, the amount of the benefits paid in excess of the amount of contributions collected shall be added to the numerator in determining the contribution rate. If the amount of benefits paid for the period used for determining the rate is less than the contributions paid by the same employers for the same period, that amount shall be deducted from the numerator in computing the rate.
- (c) The denominator is the amount of the total wages paid during the preceding calendar year by all employers that pay contributions under this subchapter.

**Sec. 204.104. Accounting for Governmental Employers**

The commission shall account separately for benefits paid and contributions collected under this subchapter, and these benefits and contributions may not be used in determining contribution rates under Subchapters A, B, C, and D.

**Sec. 204.105. Past Due Contributions**

- (a) A governmental employer that fails to pay a contribution due under this subchapter on the date it is due as prescribed by the commission is subject to the same penalties as provided for other employers under Section 213.021.
- (b) The provisions for collecting delinquent contributions under Chapter 213 apply to a governmental employer.
- (c) The commission shall notify the comptroller in writing of the name of each governmental employer that is delinquent in payment of contributions under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

**Sec. 204.106. Reports and Records**

- (a) A governmental employer shall keep records and file reports with the commission relating to individuals in its employ as required by rules adopted by the commission.
- (b) A governmental employer that does not keep the records or file the reports when due is subject to the same penalties provided for other employers under Sections 213.022, 213.023, 213.024, and 213.056.

**Subchapter G. Employment and Training Investment Assessment; Funds**

**Sec. 204.121. Employment and Training Investment Assessment.**

- (a) In addition to any other taxes imposed under this subtitle, an employment and training investment assessment is imposed on or after January 1, 2006, on each employer paying contributions under this subtitle as a separate assessment of one-tenth of one percent of wages paid by the employer.
- (b) The commission shall deposit the revenue from the employment and training investment assessment to the credit of the holding fund created under Section 204.122.
- (c) The employment and training investment assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

**Sec. 204.122. Holding Fund**

- (a) The employment and training investment holding fund is a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.
- (b) The comptroller shall administer the holding fund in accordance with the directions of the commission. Interest accruing on amounts in the holding fund shall be deposited quarterly to the credit of the compensation fund.

**Sec. 204.123. Transfer to Skills Development Fund, Training Stabilization Fund, and Compensation Fund**

- (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

- (1) during any state fiscal biennium beginning on or after September 1, 2007, 100 percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and
  - (2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.
- (b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the skills development fund and the training stabilization fund in the manner prescribed by Subsection (a).