Discussion Paper on 2022 Unemployment Insurance Tax Rates

Background

An employer's tax rate is made up of five (5) components:

1. General Tax Rate
2. **Replenishment Tax Rate** (The Commissioners have authority to adjust)
3. **Deficit Tax Rate** (The Commissioners have authority to adjust)
4. Obligation Assessment Rate (The Commissioners have authority to adjust)
5. Employment and Training Investment Assessment (No authority to change, the rate is always set at 0.10% and the Replenishment Tax Rate is reduced by a corresponding 0.10%)

Out of the five components of the tax rate, three of them can be adjusted, the two being considered are the **Replenishment Tax Rate and Deficit Tax Rate.**

On November 8, 2021, Governor Abbott signed into law SB 8 of the 87th Texas Legislature, 3rd Special Session, which appropriates $7,245,419,946 to the Unemployment Compensation Fund to pay back outstanding advances received by the state under Section 1201, Social Security Act (42 U.S.C. Section 1321), and to return the unemployment compensation fund to the statutory floor computed under Section 204.061, Labor Code, on October 1, 2021, as reimbursement for payments made as a result of the coronavirus disease pandemic.

Issue: Replenishment Tax Rate (RTR)

The Commission has authority to set this rate under Section 204.067 of the Texas Labor Code.

The RTR is a flat tax paid by all employers on the first $9,000 of taxable wages. Its purpose is to replenish the Unemployment Compensation Trust Fund for half of the benefits paid to eligible workers that were not charged to any specific employer. Since no one employer is held liable for these benefits, the Texas Labor Code spreads the cost among all experience-rated employers. The RTR for 2020 was 0.21% and the RTR for 2021 was 0.18% when adjusted for the ETIA tax. TWC also assessed a 0.03% Obligation Assessment to cover Title XII interest due in 2021. **The calculated 2022 RTR with no commission adjustment is estimated to be 1.01%.** Note the RTR is inclusive of the 0.10% offset for the Employment and Training Investment Assessment (ETIA) component per statute.

Each year, TWC calculates the RTR using this formula:
RTR = (One-half benefits paid but not charged to any employer ÷ One Year's Total Taxable Wages) – 0.10% required by Sec. 204.0625

Decision Point: Replenishment Tax Rate

The Commission has authority to set this rate under Section 204.067 of the Texas Labor Code.

In 2021 there were just under $2 billion of non-effective charges, approximately $1.3 billion of those were COVID-19 non-charges. If the Commission were not to adjust the Replenishment Tax the rate would be approximately 1.01%.

Employers that pay the minimum tax rate would have a rate of 1.11% assuming the Commission set the Deficit Tax Rate to 0% in 2022. Employers that pay the maximum tax rate would pay a rate of 7.11% in 2022. The minimum and maximum tax rates for 2021 were 0.31% and 6.31%. All rates include the statutory 0.10% ETIA tax.

The table below shows the Replenishment Tax Rates for the years 2010-2021 along with the estimate of the 2022 rate under three options.

2017	2018	2019	2020	2021	2022 No Change	2022 Option 1	2022 Option 2
0.41%	0.36%	0.26%	0.21%	0.18%	1.01%	0.21%	0.44%

There are currently three options presented regarding adjustments to the Replenishment Tax Rate.

TWC currently projects with a Replenishment Tax of 0.21% or 0.44% the unemployment compensation trust fund will be above the floor on October 1, 2022.

1. **Set the 2022 Replenishment Tax Rate to 0.21%.** This is the same Replenishment Tax rate as Tax year 2020, prior to COVID-19.
2. **Set the 2022 Replenishment Tax Rate to 0.44%**. This is the estimated 2022 Replenishment Tax Rate without the impact of COVID-19.

Note: *Rates include the 0.10% reduction for the ETIA Tax as required by Section. 204.0625.*

Issue: Deficit Tax Rate (DTR)

The Commission has authority to set this rate under Section 204.067 of the Texas Labor Code.

The third component of the tax rate is the Deficit Tax Rate (DTR). When the amount of money in the Unemployment Compensation (UC) Trust Fund as of September 30 is less than the floor of the compensation fund, a DTR is added for the next calendar year for each experience-rated employer. The floor is defined as 1% of taxable wages. The 2021 Deficit Tax was set to 0%.

The table below shows the estimated UC Trust Fund balance and floor test with SB8. As of September 30, 2021, TWC estimates the UC Trust Fund balance would have been $471.1 million above the floor with SB8.

Trust Fund	October 1, 2022 Trust Fund Balance with SB 8
Cash Balance UC Trust Fund September 30, 2021	*($5,882.6)*
SB 8 Deposit to Unemployment Compensation Fund	*$7,245.4*
UC Trust Fund Floor Amount (1% of Taxable Wages)	*$1,123.2*
Net Position of UC Trust Fund Less Floor Test	***$1,362,9***

Note: *Amounts are in Millions.*

Note: *On November 8, 2021, Governor Abbott signed into law Senate Bill 8, 87th Legislative Session, 3rd Special Session appropriating $7,245,419,946 to the Unemployment Compensation Fund.*

Decision Point: Deficit Tax Rate

There is currently one option presented regarding the DTR:

1. **Adjust the Deficit Tax Rate to 0.0%.** This is the 2022 Deficit Tax Rate that would have been assessed if the $7.2 billion appropriated in SB 8 were deposited into the unemployment compensation fund on September 30, 2021.

Issue: Obligation Assessment Rate (Interest Assessment)

Section 203.105 of the Texas Labor code requires that an obligation assessment shall be imposed if after January 1 of a year an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise. On June 15, 2021 TWC assessed an Obligation Assessment of 0.03% to cover interest due on September 30, 2021. On September 30, 2021 TWC paid $8,951,576.87 in interest on its Title XII advances and as of November 9, 2021 has a remaining cash balance of $20,005,934.18 in Obligation Assessment funds. As of November 10, 2021, TWC owes $15,079,255.37 in Title XII interest that would be due on September 30, 2022.

TWC is accruing approximately $370,000 a day in interest on its Title XII advances. In the event funds from SB 8 are not transferred to TWC in time to repay its debt before the interest due exceeds the available cash balance of its 2021 Obligation Assessment, TWC would need to assess an Obligation Assessment on employers in 2022. The Obligation Assessment Rate is added to all employers eligible for an experience rating.

TWC rule 815.132 provides the methodology for setting the interest component of the Obligation Assessment which include 200% of the estimated amount due and dividing by the estimated 2022 first and second quarter taxable wages, not to exceed two-tenths of one percent. It is estimated an Obligation Assessment of 0.01% would collect funds necessary to pay any additional interest due.

In the event the TWC repays its Title XII advances and the interest due on its Title XII advances is less than the cash balance from its 2021 Obligation Assessment, no addiotnal assessment will be needed for tax year 2022.

Decision Point: Obligation Assessment Rate (Interest Assessment)

Staff seek approval on setting the setting the Obligation Assessment Rate at 0.01% necessary to cover any interest due on September 30, 2022.