Discussion Paper on 2021 Unemployment Insurance Tax Rates

Background

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

1. **General Tax Rate** (Amended by HB7, 87th Regular Session)
2. **Replenishment Tax Rate** (The Commissioners have authority to set)
3. **Deficit Tax Rate** (The Commissioners have authority to set)
4. **Obligation Assessment Rate** (The Commissioners have authority to set)
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 three being considered are the **Replenishment Tax Rate, Deficit Tax Rate and Obligation Assessment (Interest Assessment). Any adjustments to lower the Replenishment Tax Rate and or the Deficit Tax Rate from its calculated levels could be expected to increase the amount of a future Obligation Assessment Rate if TWC determines the issuance of bonds is the best option for employers to bring the trust fund back to solvency.**

On February 24, 2021 the Commission voted to delay setting the 2021 employer tax rates to allow for more time with legislative efforts that could affect the 2021 rates. On May 13, 2021 Governor Abbot signed into law HB7 which removes COVID-19 Non-Effective charges from the calculation of the Replenishment Ratio used in the General Tax.

Between October 1, 2019 and September 30, 2020 TWC paid $8.7 billion in state Unemployment Compensation benefits on behalf of experience rated employers; $2 billion are effectively charged benefits and $6.7 billion are non-effectively charged benefits. Approximately $5.2 billion of the $6.7 billion in non-effectively charged benefits are related to COVID-19.

Total Benefits Paid	Effective Benefits	Non-Effective Benefits	COVID-19 Non-Effective Benefits (HB7)	One-Half of Non-Effective Benefits under HB7
$8.7 Billion	$2 Billion	$6.7 Billion	$5.2 Billion	$730 million

The Replenishment Ratio of the General Tax for Tax Year 2021 will be 1.37 when calculated in accordance with HB7, for Tax Year 2020 the Replenishment Ratio was 1.32.

Even though TWC delayed employer remittances for the 1st quarter of 2021, approximately 438,400 employers submitted over $1 billion in remittances for the 1st quarter of 2021.

Staff are seeking Commission direction with respect to any adjustments of the 2021 Replenishment Tax Rate, Obligation Assessment Rate and Deficit Tax Rate.

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 can be held liable for these benefits, the Texas Labor Code spreads the cost among all experience-rated employers. The RTR for 2020 was 0.21% when adjusted for the ETIA tax. **The calculated 2021 RTR with no commission adjustment is 2.81%.** 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.

Even though TWC delayed setting the 2021 employer tax rates and the 1st quarter remittances, over three hundred thousand employers paid their first quarter estimated taxes on April 30, 2021. TWC staff randomly sampled 50 employer remittances and determined all 50 employers used the 2020 Replenishment Tax Rate as a basis for paying their estimated 2021 1st quarter taxes.

In 2020, 355,072 employers paid the minimum tax rate (0.31%) and 23,779 employers paid the maximum tax rate (6.31%). Employers with no experience rating (no chargeable benefits in the last 36 months) paid the minimum tax rate of 0.31%. The minimum tax rate was comprised of a Replenishment Tax Rate of 0.21% plus and ETIA Tax of 0.10%. Employers that paid a maximum rate of 6.31% included a 6% General Tax Rate plus a 0.21% Replenishment Tax Rate and an ETIA Tax Rate of 0.10%.

The table below shows the Replenishment Tax Rates for the years 2012-2021 along with the estimate of the 2021 rate under three options.

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021 No Adjust ment	2021 Option 1	2021 Option 2	2021 Option 3
0.42%	0.38%	0.35%	0.31%	0.29%	0.41%	0.36%	0.26%	0.21%	2.81%	0.18%	0.21%	0.54%

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

1. **Set the 2021 Replenishment Tax Rate to a rate of 0.18%.** This in combination with the Obligation Assessment Rate (See Obligation Assessment Rate Decision) would provide the same minimum and maximum tax rate as 2020 assuming the Deficit Tax is set to 0% and the Obligation Assessment is set at 0.03%.
2. **Set the 2021 Replenishment Tax Rate to the 2020 rate of 0.21%**. This is the basis most employers used to pay their estimated 2021 Replenishment Taxes as of April 30, 2021.
3. **Adjust the 2021 Replenishment Tax Rate to 0.54%.** This is the estimated 2021 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 fourth 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 2020 Deficit Tax Ratio was 0.00%. **The 2021 calculated Deficit Tax Rate is at the statutory limit of 2%**

The Deficit Tax Rate is determined by this formula:
Prior Year Rate x Deficit Ratio, rounded to the nearest hundredth (limited to 2%)

The table below shows the estimated UC Insurance Trust Fund balance and floor test without COVID-19. As of September 30, 2020, TWC estimates the UC Trust Fund balance would have been $471.1 million above the floor without COVID-19.

Trust Fund	2020 Estimate Without COVID-19	2020 Actual
Beginning Cash Balance UC Trust Fund October 1, 2019	*$2,190.4*	*$2,190.4*
Add: Employer Remittances	*$2,181.4*	*$2,181.4*
Add: Treasury Offset Recoveries	*$6.4*	*$6.4*
Add: Depository Interest	*$29.2*	*$29.2*
Add: Transfers and Adjustments	*$57.6*	*$414.7*
Deduct: Unemployment Benefits Paid	*($2,847.5)*	*($9,413.5)*
Unemployment Trust Fund Cash balance September 30, 2020	***$1,617.5***	***($4,591.4)***
UC Trust Fund Floor Amount (1% of Taxable Wages)	*$1,146.4*	*$1,146.4*
Net Position of UC Trust Fund Less Floor Test	***$471.1***	***($5,737.80)***

Note: *Amounts are in Millions.*
Note: *The 2020 Actual Transfers and Adjustments includes a transfer of $375 million from the ETIA holding fund to the UC Trust Fund as the trust fund was below the statutory floor on September 1, 2020 in accordance with Sec 204.123.*
Note: *The $9.4 billion in benefits paid includes all state benefits paid from the UI Trust Fund, not just the benefits paid for taxable employers as described in the background.*

Decision Point: Deficit Tax Rate

For 2020, most of the benefits paid to eligible workers that were not charged to any specific employers was a result of a COVID-19 related claim. There is currently one option presented regarding the DTR:

1. **Adjust the Deficit Tax Rate to 0.0%.** This is the estimated 2021 Deficit Tax Rate without COVID-19. A decision on the issuance of bonds, and Obligation Assessment Rate will have to be made at a future date.

Issue: Obligation Assessment Rate (Interest Assessment)

Section 203.105 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. Title XII advances are currently interest free until September 6, 2021 and TWC projects it will accrue $9,667,253 million in interest as of September 30, 2021 if the interest free period is not extending.

TWC rule 815.132 provides the methodology for setting the interest component of the Obligation Assessment which include 200% of the estimated $ 9,667,253 million due by the estimated 2021 first and second quarter taxable wages, not to exceed two-tenths of one percent. This would calculate to an Obligation Assessment of 0.03%.

Decision Point: Obligation Assessment Rate (Interest Assessment)

Staff seek approval on setting the setting the Obligation Assessment Rate at 0.03% necessary to cover any interest due on September 30, 2021.