

Proposed New Rules for Chapter 815. Unemployment Insurance, Subchapter C. Tax Provisions, Section 815. 132. Rate and Collection of Additional Tax

ON JULY 16, 2002, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: August 2, 2002.

Estimated End of Comment Period: September 3, 2002.

The Texas Workforce Commission (Commission) proposes new §815.132 Rate and Collection of Additional Tax to Chapter 815, Unemployment Insurance, Subchapter C. Tax Provisions.

Title XII of the Social Security Act codified in part at 42 U.S.C.A. §1321 et seq., creates a process that permits a state to borrow from the Federal Unemployment Trust Fund, if a state's unemployment compensation trust fund becomes insolvent and the state can no longer pay benefits. In accordance with this process Subchapter C, Chapter 203 of the Texas Labor Code, V.T.C.A., entitled Advances from Federal Trust Fund, authorizes the Commission to borrow funds from the Federal Unemployment Trust Fund. The subchapter requires the Commission to assess and collect an additional tax to ensure that the interest is timely paid on advances borrowed from the Federal Unemployment Trust Fund. The additional tax is deposited in the advance interest trust fund.

Texas Labor Code, §203.105, provides that an additional tax is to be imposed on each employer eligible for an experience tax rate, if after January 1 of a year an interest payment on an advance borrowed from the Federal Unemployment Trust Fund will be due and the estimated amount necessary to make the interest payment will not otherwise be available. The section provides that the Commission will set a rate for an additional tax to ensure that there are sufficient funds in the advance interest trust fund to pay the interest in a timely manner for that year. The rate is not to exceed two-tenths of one percent (.2%). The rate is applied to the same wage base to which the employer's unemployment tax is applied for that year. The Commission will set the date the tax is due. The additional tax is subject to the same penalty for late payment as the unemployment tax.

The Commission has determined that when interest payments are due after January 1, the additional tax rate will be calculated by the Agency based on a formula. The Commission has also determined that the amount of tax revenue generated by this formula will be sufficient to ensure that the accrued interest on the advance the state obtain from the Federal Unemployment Trust Fund will be paid in a timely manner. This tax will be due and payable quarterly in the same manner as provided in §815.109 of this subchapter entitled Payment of Contributions and Reimbursements.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules, except that the funds raised by the additional Tax is will be paid to the federal government to pay interest on the advance(s);

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are anticipated costs to persons who are required to comply with the rules as proposed, because the rate determined by the formula will be assessed on the first \$9,000 of wages per employee as required by statute.

Mr. Townsend, Chief Financial Officer, has determined that there is anticipated adverse impact on small businesses as a result of enforcing or administering these rules. The rate determined by the formula will be assessed on the first \$9,000 of wages paid per employee as required by statute.

LaSha Lenzy, Director, Unemployment Insurance and Regulation Division, has determined that for each year of the first five years that the rule will be in effect the public benefit anticipated as a result of the adoption of the proposed rule will be the timely payment of interest on funds borrowed from the Federal Unemployment Trust Fund.

James Barnes, Director, Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of this proposed rule.

Comments on the proposed section may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number 512-463-2220; or e-mailed to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

For more information about the Commission and available services, see www.texasworkforce.org.

The proposed new rule affects Texas Labor Code, Title 4.

The rule is proposed under Texas Labor Code §301.061.

<new>§815.132. The Rate and Collection of the Additional Tax.

Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall impose an additional tax on each employer eligible for an experience tax rate if, after January 1 of a year, an interest payment on an advance obtained by the state from the Federal Unemployment Trust Fund will be due and the estimated amount necessary to make the interest payment is not otherwise available. The Commission has determined that when interest payments are due after January 1, the additional tax rate will be calculated by the Agency based on a formula. The Commission has also determined that the amount of tax revenue generated by this formula will be sufficient to ensure that the accrued interest on the advance the state obtained from the Federal Unemployment Trust Fund will be paid in a timely manner.

- (1) When the Commission determines that an interest payment as referred to in the paragraph above will be due after January 1 of a year, the Commission shall compute the tax rate using the formula in paragraph (2) of this section, before November 20th of the year prior to the year in which the interest is due. This rate shall be published in the *Texas Register*.
- (2) The additional tax rate, not to exceed two tenths of one percent, is calculated by dividing two hundred percent (200%) of the estimated interest due, as determined by the Agency, less the balance in the advance interest trust fund, by the estimated total taxable wages for the 1st and 2nd quarters of the year in which the interest is due, and rounded up to the next hundredth.
- (3) Employers eligible for an experience tax rate shall pay the additional tax which will be due and payable quarterly in the same manner as provided in §815.109 of this chapter (relating to Payment of Contributions and Reimbursements).