



Credits & Incentives talk with Deloitte

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Texas has historically allowed local communities to lead the way in the realm of business attraction and the awarding of business incentives, notably through a statewide economic development program known as the Texas Enterprise Zone Program. This program allows companies that make capital investments and add (or in some cases commit to retain) employees to potentially qualify for valuable economic benefits. This column provides an overview of the Texas Enterprise Zone Program, with discussion of the history and the mechanics of the program.

Program overview

The Texas Enterprise Zone Program ("Program") is an economic development tool by which local communities partner with the State of Texas to encourage job creation and capital investment in

economically distressed areas of the state.¹ For a business to potentially receive benefits under the Program, the local community must initially nominate a business for enterprise project designation. Each local community has a limited number of project designations it can allocate, and the state has a maximum number of 105 designations that can be awarded per two-year period.²

Smaller designated projects may receive a benefit of \$2,500 per new or retained job over a five-year period. For larger capital projects, the benefit can increase to \$5,000 or \$7,000 per job. However, only projects creating at least 500 net new jobs qualify for this increased benefit. The benefit is received through a refund of Texas state sales and use taxes paid on specific items purchased, used, or installed at the enterprise project site.³ As of July 2015, the Program since its inception had accounted for 979 projects with 405,473 jobs (new and retained) and \$74.1 billion in capital investment.⁴

Applications are accepted quarterly with the deadlines on the first working day of March, June, September, and December. Enterprise project designation is for a period of up to five years. Employment and capital investment commitments must be incurred and met within the period starting 90 days before the application date through the designation expiration date.

Projects may be physically located inside or outside of an enterprise zone. If located within a zone, the company commits that 25% of new employees will meet economically disadvantaged, enterprise zone residency, or veteran requirements. If located outside of a zone, the company commits that 35% of new employees will meet economically disadvantaged, enterprise zone residency, or veteran requirements.⁵

Job positions must provide employment of at least 1,820 hours during a 12-month period. If an employee is terminated and replaced, the original employee plus the replacement employee must, when aggregated, meet the 1,820 hour requirement.⁶ In retained jobs designations, the 25% or 35% targeted employee requirements apply to any replacement employee filling those "retained" jobs. Job positions must exist through the end of the designation period, or at least three years after the date on which a state benefit is received, whichever is later.⁷

Texas Enterprise Zone Program history and updates

Originally enacted in 1983, the stated purpose of the Texas Enterprise Zone Program was to "stimulate and encourage business and industrial growth and to stimulate neighborhood revitalization of residential units and public services in these depressed areas of the state by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives."⁸

The Program has been modified several times over the past three decades, with significant changes enacted in September 2003 that authorized the creation of new enterprise zones, changed the designation criteria and streamlined the application process.⁹ The Program underwent other notable changes in 2011 and 2015. Although the criteria for designation as an enterprise zone have changed since its original inception in 1983, the goal of the Program remains the same: encourage business and industrial growth.¹⁰

Program changes effective 2003

The distinction between "enterprise zone" and "enterprise project" is important. Effective September 1, 2003, an "enterprise zone" is a specific geographic area, defined as a census block group that has a poverty level of 20 percent or greater.¹¹ Also included in the enterprise zone designation are areas designated by the federal government as a Renewal Community (RC), an Empowerment Zone (EZ), or an Enterprise Community (EC).¹²

An "enterprise project" is a specific business, often located within an enterprise zone, that has been nominated to participate in the Program and is therefore eligible to receive state and/or local benefits. A key change in 2003 was removing the requirement that a business be physically located within an established enterprise zone in order to participate in the Program.¹³ This change served to streamline the enterprise project designation process.

Program changes effective 2011

From 2003 until 2010, the Texas Enterprise Zone Program remained relatively unchanged with respect to procedures, awarding of projects, and project allocation per application round. After a record number of Texas Enterprise zone project designations were awarded in the September 1, 2010 application round, the Program was suspended for the remainder of the biennial period through September 2011. During the hiatus, the Office of the Governor made several changes to the Program effective for the September 1, 2011 application cycle, which included the following:¹⁴

- increasing to nine the number of project designations for which a city or county with a population of 250,000 or more may apply;¹⁵
- increasing to six the number of project designations for which a city or county with a population of less than 250,000 can apply;¹⁶

- eliminating bonus project designations;¹⁷ and
- limiting to 12 the number of project designations approved per quarterly round so as to prevent all of the designations from being used in a single round and to allow designations to be available throughout the entire two-year period.¹⁸

Program changes effective 2015

The Texas Legislature passed S.B. 100, effective September 1, 2015, which further modified the Texas Enterprise Zone Program, as follows:

- Introduced "half designations," which allow smaller communities to use one half of an authorized designation for a project for a maximum of 250 jobs to be retained or created with a maximum refund of \$125,000 each state fiscal year.¹⁹ The maximum rebate available for a half enterprise project is \$625,000.²⁰
- Requires the execution of an inter-local agreement between a county and a local municipality if the county seeks to nominate a project inside of a local municipality yet within the county.²¹
- Counts only new jobs for per worker tax refund incentives for "double" and "triple" jumbo awards (i.e., larger projects with tax refunds of \$5,000 or \$7,500 per job created).²²
- Includes veterans as one of the designated categories of individuals that may satisfy the new job hiring requirement.²³
- Limits the use of site designations so no more than two active designations may occur at the same qualified business site at one time.²⁴

Current application process

In general, the current enterprise zone application process requires two to three months from submission to final approval. The three steps in the application process are as follows:

1. Project nomination by local community.
2. Submission of application to state.
3. Review, scoring, and approval/denial by the Office of the Governor.

Communities are required to identify the local incentives that may be offered to designated enterprise projects. The community is also responsible for designating a liaison to oversee its enterprise projects. The nominating body must hold a public hearing and subsequently pass an ordinance or order, as

appropriate. Additionally, an application must be submitted to the Office of the Governor by the quarterly filing deadline—the first working day of March, June, September, and December.

Enterprise project applications contain scoring criteria that help the Governor's Office compare various applications. Project designations are competitively awarded based on a project's application score, capital investment, and job commitments.

For purposes of an application's score, points are awarded based on a variety of factors, such as the economic distress of the geographic area where the capital investment will occur, the revitalization efforts of both the business under consideration and the nominating jurisdiction, and the type and wage level of the jobs to be created or retained.²⁵ The application scorecard is segmented into three distinct parts with a certain percentage of the overall points earmarked for each one, as outlined below.

- Economic distress: Up to 85 points (40% of total) may be awarded based on the economic distress characteristics of the immediate geographic area.²⁶ Generally, projects located in rural areas garner more economic distress points.
- Local effort: Up to 53 points (25% of total) may be awarded based on local efforts aimed at achieving development and revitalization of the community in which a proposed project is located.²⁷
- Private effort: Up to 75 points (35% of total) may be awarded based on type and wage levels of the jobs to be created or retained, and the project applicant's level of cooperation and support committed to the revitalization goals of all communities within the jurisdiction of the nominating governmental entity.²⁸
- State priority: Up to 10 points may be awarded by the Office of the Governor, at its discretion, for a project that is deemed a "state priority."²⁹ Projects that have a significant (e.g., greater than \$1 billion) capital investment, create at least 500 new jobs, are in certain targeted industries, or are located in economically distressed parts of the state typically receive consideration for these bonus points.

Sales and use tax refund claim process

As mentioned earlier, upon receipt of an enterprise project designation, the business has five years to make the required investments and meet employment commitments. During that five-year designation period (and for the 18 months following the end of the designation) the business can file for refunds of sales and use tax.³⁰

The filings for refund encompass two elements. One must file an Application for Program Benefits with the Texas Comptroller, which includes a job certification report schedule detailing the employment history of the project, as well as provide prescribed employee data for those persons filling the new or retained jobs.³¹ Additionally, a sales and use tax refund claim must be filed with the Comptroller in a prescribed format.³²

The sales and use tax refund claim schedules serve to document the qualified spend, and sales or use tax paid on those expenditures.³³

Upon receipt of a refund claim, the state will assign the refund claim to an auditor for review.³⁴ Audit time on a claim can vary widely; however, a typical Texas Enterprise Zone Program audit will take between six and nine months to complete.

Looking to the future

Many factors affect the level of economic activity within a state. Some of these factors are outside the control of government, ranging from the climate and natural resources to the availability of labor and the proximity to other markets. At the same time, many factors are subject to state and local governmental policies and can impact economic growth. Among these are the public services provided, the condition and investment in public infrastructure, and policies regarding regulation, legal system, and taxation.³⁵

The Texas Enterprise Zone Program seeks to positively affect some of the factors mentioned above. In addition, the Program attempts to promote good corporate citizenship by potentially awarding more points to businesses that conduct veterans outreach, participate in job training, juvenile crime prevention, or other charitable activities.

¹ Texas Enterprise Zone Overview, <https://texaswideopenforbusiness.com/services/tax-incentives>.

² Frequently Asked Questions, <https://texaswideopenforbusiness.com/services/tax-incentives>.

³ *Id.*

⁴ <https://texaswideopenforbusiness.com/sites/default/files/enterprisezone.pdf>.

⁵ *Id.* Note that veteran inclusion in the 25% or 35% new employee threshold was effective September 1, 2015.

⁶ <https://www.comptroller.texas.gov/taxes/audit/docs/enterprise-manual.pdf>.

⁷ Frequently Asked Questions, <https://texaswideopenforbusiness.com/services/tax-incentives>.

⁸ Texas Enterprise Zone Act, 68th Leg., R.S., ch. 841, p. 4772, (to be codified at Tex. Gov't Code § 2303).

⁹ Acts 2003, 78th R.S., ch. 814, § 23, General and Special Laws of Texas.

¹⁰ http://www.ibrarian.net/navon/paper/Texas_Enterprise_Zone_Program.pdf?paperid=5104874.

¹¹ Acts 2003, 78th R.S., ch. 814, § 23, General and Special Laws of Texas.

¹² http://www.ibrarian.net/navon/paper/Texas_Enterprise_Zone_Program.pdf?paperid=5104874. These enterprise zone designations remain the same currently.

¹³ Acts 2003, 78th R.S., ch. 814, § 23, General and Special Laws of Texas. Tex. Gov't Code § 2303.003(5) was amended to replace "enterprise zone" with "enterprise project."

¹⁴ 36 Tex. Reg. 4527-4530. These changes affect 10 Tex. Admin. Code §§176.1-176.5.

¹⁵ 36 Tex. Reg 4529. This change affects 10 Tex. Admin. Code §176.3(d).

¹⁶ *Id.* This change affects 10 Tex. Admin. Code §176.3(e).

¹⁷ *Id.*

¹⁸ *Id.* This change affects 10 Tex. Admin. Code §176.3(f).

¹⁹ Acts 2015, 84th R.S., ch. 591, General and Special Laws of Texas. Tex. Gov't Code § 2303.406(d-1) was added to allow for the creation of half designations.

²⁰ *Id.* Tex. Gov't Code § 2303.407(e) was created to show the benefits allowed for half designations.

²¹ *Id.* This change affects Tex. Gov't Code § 2303.004(c).

²² *Id.* This change affects Tex. Gov't Code §§ 2303.407(b)(4)-(5).

²³ *Id.* Also see Tex. Gov't Code § 2303.402(a)(1)(C).

²⁴ *Id.* Also see Tex. Gov't Code § 2303.406(e). Further information is available at https://texaswideopenforbusiness.com/sites/default/files/bank_annual_report_fy2015.pdf.

²⁵ Tex. Gov't Code § 2303.406(b) lists the weighted scale used for scoring proposed enterprise projects.

²⁶ Tex. Gov't Code § 2303.406(b)(1).

²⁷ Tex. Gov't Code § 2303.406(b)(2).

²⁸ Tex. Gov't Code § 2303.406(b)(3).

²⁹ Enterprise Project Application, page 21. <https://texaswideopenforbusiness.com/services/tax-incentives>. Note that State Priority points are awarded on a discretionary basis by the Office of the Governor and are used only for internal purposes, as indicated in the Texas Enterprise Project Application.

³⁰ Tex. Gov't Code § 2303.4072.

³¹ Audit Procedures for Enterprise Zones & Qualified Hotel Projects, 2. This document is found at <https://www.comptroller.texas.gov/taxes/audit/docs/enterprise-manual.pdf>.

³² *Id.* The prescribed forms used for enterprise zone sales and use tax refund claims are Form 01-144, Enterprise or Defense Readjustment Claim for Refund of Texas State Sales and Use Tax and Form 01-125, Enterprise or Defense Readjustment Project-Invoices or Contracts.

³³ Audit Procedures for Enterprise Zones & Qualified Hotel Projects, 8.

³⁴ Audit Procedures for Enterprise Zones & Qualified Hotel Projects, 9.

³⁵ https://texaswideopenforbusiness.com/sites/default/files/bank_annual_report_fy2015.pdf.