



## TEXAS ENTERPRISE ZONE PROGRAM SUMMARY

---

### BACKGROUND

Since its inception in 1988, the Texas Enterprise Zone Program (“Program”) has attracted more than \$28 billion in capital investment to the State of Texas (“State”). In addition, the Program has been instrumental in securing more than 129,000 projected new jobs and more than 70,000 retained jobs in the State.

Many national relocations, as well as local industry expansions, have been designated under the Program, including projects associated with the following entities or subsidiaries thereof:

- 3M Company
- Alcoa Inc.
- BASF Corporation
- Cingular Wireless Corporation
- Exxon Mobil Corporation
- FedEx Corporation
- Kimberly-Clark Corporation
- Lowe’s Companies, Inc.
- Target Corporation
- The Boeing Company
- The Home Depot, Inc.
- Toyota Motor Corporation
- Valero Energy Corporation
- Wal-Mart Stores, Inc.

### BASIC ELEMENTS OF THE PROGRAM

Program sales and use tax refunds (“Refunds”) are based on the level of investment and job activity. The following chart details the Refund thresholds for incremental levels of capital investment:

Proposed Business Investment over Five-Year Period	Refund Dollars per Job	Maximum Created or Retained Jobs	Maximum Refund over Five-Year Period *
\$40,000–\$399,999	\$2,500	10	\$25,000
\$400,000–\$999,999	\$2,500	25	\$62,500
\$1,000,000–\$4,999,999	\$2,500	125	\$312,500
\$5,000,000–\$149,999,999	\$2,500	500	\$1,250,000
\$150,000,000–\$249,999,999 <b>Double Jumbo Project</b>	\$5,000	500	\$2,500,000
\$250,000,000 + <b>Triple Jumbo Project</b>	\$7,500	500**	\$3,750,000

\* Less 3% administration fee charged by the Texas Economic Development Bank.

\*\* Triple Jumbo Enterprise Projects must create and/or retain at least 500 jobs.

The Texas Economic Development Bank (“ED Bank”), part of the Office of the Governor Economic Development and Tourism (“OOGEDT”), administers the Program. The ED Bank is authorized to designate up to 105 businesses every biennium as Texas Enterprise Projects (“Projects”). Currently, there are approximately 75 designations remaining statewide this biennium. The governing body of the applicable municipality or county (“Jurisdiction”) nominates a qualified business to the OOGEDT in order to be designated as a Project and, therefore, to be eligible for Refunds. Jurisdictions with more than 250,000 residents may nominate up to nine Projects every biennium, while Jurisdictions with less than 250,000 residents may nominate up to six Projects biennially. The ED Bank assesses a 3% administration fee on Refunds received by participating in the Program.

In 2003, the 78<sup>th</sup> Legislature significantly expanded the tax benefits provided to Program participants. More specifically, Program changes gave participants the opportunity to claim larger sales and use tax refunds on qualified purchases for Projects that included projected capital investments of at least \$150 million.

Additionally, this legislation provided that a business no longer needed to be physically located within a Texas Enterprise Zone (“Enterprise Zone”) to be eligible for the Program’s Refunds (an Enterprise Zone is a State designated geographic area with certain economic and physical characteristics). Prior to the Texas Legislature’s expansion of the Program, qualifying businesses were required to be located in one of these geographic areas, which significantly limited the number of eligible businesses who might participate in the Program. Now, eligible businesses not physically located in an Enterprise Zone may be nominated to receive Project status by the governing body of their Jurisdiction, although these businesses must meet a higher threshold with respect to the hiring of individuals that are considered “economically disadvantaged” or Enterprise Zone residents under the Program (see below for further details).

## **ENTERPRISE PROJECT DESIGNATION**

In order for a Jurisdiction’s nomination to be designated as a Project by the OOGEDT, certain criteria must be met by the business under consideration. These are statutory requirements pursuant to Tex. Government Code Ann. Section 2303 (2001) and subsequent amendments resulting from Texas Senate Bill 275, Laws 2003.

First, the business must have plans to invest new capital and hire or retain a minimum number of employees. Second, businesses must commit to hire a certain percentage of “economically disadvantaged” individuals or Enterprise Zone residents. Currently, the economically disadvantaged hiring requirement for businesses located in an Enterprise Zone is 25%, while the requirement for businesses located outside of an Enterprise Zone is 35%. This percentage must be maintained for the time period that a business qualifies as a Project, which is typically five years. Third, the business must maintain separate books and records for the qualified site. These separate records must be made available for inspection by the OOGEDT. Finally, for a business to be eligible for Project consideration, it must commit to maintaining the level of employment

that existed 90 business days prior to Project designation. Additionally, the business must commit to maintain the jobs that are certified for benefit. These jobs must be retained for three years after the Application for Program Benefits, which defines the initial job certification claim period, or the expiration date of the project, whichever is longer.

### **“ECONOMICALLY DISADVANTAGED” INDIVIDUALS**

Qualification as an “economically disadvantaged” individual is generally based on low income or other poverty indicators. Specifically, such individuals must meet **one** of the following descriptions:

1. Unemployed for the preceding three months.
2. Recipient of some type of public assistance (e.g., food stamps).
3. Eligible for the Federal Work Opportunity Tax Credit Program.
4. A handicapped individual.
5. An inmate entering the workforce after serving in a correctional facility.
6. Earn less than 80% of the median area income as provided by the latest U.S. Census.
7. A parolee from the Texas Youth Commission.

Once an employee is determined to be “economically disadvantaged,” that individual will be included as part of the 25% or 35% hiring requirement, even if the employee’s status changes over the five-year designation period.

### **DISTRESSED COUNTIES**

The 79<sup>th</sup> Legislative Session (2005) amended the Program to allow for businesses within “distressed counties” to be nominated for Project designation with the lower economically disadvantaged (qualifications discussed *infra.*) hiring requirement of 25%. Specifically, the Program was extended to allow Jurisdictions within “distressed counties” to nominate Projects without regard to the poverty distress within the city limits or extra-territorial jurisdiction. “Distressed counties” are determined annually by the ED Bank according to census statistics on poverty, educational attainment, and unemployment. A “distressed county” is one:

1. that has a poverty rate above 15.4%;
2. in which at least 25.4% of the adult population does not hold a high-school diploma or high-school equivalency certificate; and
3. that has an unemployment rate that has remained above 4.9% during the preceding five years.

### **JOB RETENTION PROJECTS**

Unlike most states, Texas allows generous incentives for businesses that invest in their facilities and ultimately improve their plant’s or operation’s efficiency. More specifically, this unique provision allows businesses to obtain tax incentives for both creating new jobs and/or retaining

current employees. This “job retention” provision allows businesses to be eligible for Project designation if any of the following characteristics are true or if the planned investment will meet **one** of the following requirements:

1. The employees of the business will be permanently laid off.
2. The operations of the business will be permanently shut down.
3. The business will relocate out of state.
4. The business facility has been legitimately destroyed or impaired due to fire, tornado, hurricane, or other natural disaster.
5. The business facility is able to employ individuals in accordance with Section 2303.402.<sup>1</sup>

If a business meets any one of these criteria, it must first submit a request for job retention benefits in the form of a letter to its nominating Jurisdiction. The nominating Jurisdiction will then review this request for pre-approval before proceeding with the Texas Enterprise Project Application (“Application”).

## **PROJECT APPLICATION APPROVAL**

Each Application received by the OOGEDT is evaluated for approval based on the Application’s overall score. 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.

For purposes of scoring, the Application is segmented into three distinct parts with a certain percentage of the overall points earmarked for each one. The points are allocated as follows:

- **40** - Distress: Economic distress characteristics of the immediate geographic area.
- **25** - Local Effort: Local efforts aimed at achieving development and revitalization of the block group in which a proposed Project is located.
- **35** - Private Effort: 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 the block groups within the Jurisdiction of the nominating governmental entity.
- **10** - Private Effort: OOGEDT may allocate up to ten points for a project that is deemed a “state priority.”

---

<sup>1</sup> Section 2303.402 refers to a business certifying that it is engaged in or has provided substantial commitment to initiate the active conduct of business in the state and, if in an Enterprise Zone, will commit to hire at least 25% of “economically disadvantaged” individuals or Enterprise Zone residents, or, if not in an Enterprise Zone, will commit to hire at least 35% of “economically disadvantaged” individuals or Enterprise Zone residents.

Considering the Project scoring process and the limited number of Projects a governing body may nominate, it is imperative to recognize all characteristics of the Project and all activities of the eligible business and its nominating Jurisdiction in an effort to maximize the score of the Application being submitted.

## **SALES AND USE TAX INCENTIVES**

Depending on the level of capital investment associated with the Project, a qualifying business may be eligible to receive from \$2,500 to \$7,500 of Refunds per job created and/or retained up to a maximum of \$3.75 million over a five-year period (see table on page one for further details). The maximum Refund per state fiscal year is limited to \$250,000 for a single designation, \$500,000 for a Double Jumbo designation, and \$750,000 for a Triple Jumbo designation. These Refunds are for state (not local) taxes only. Qualified purchases eligible for Refunds include taxable transactions that are used at the qualified business site.

When a business meets the Program requirements, the business may look back 90 business days prior to its official designation, and Refunds may be claimed for sales and/or use tax paid on qualified purchases made from 90 business days back until the date the designation expires. The business will have 18 months after the expiration of the Project designation period to collect and submit its support documents for a final Refund from the Comptroller of Public Accounts.

## **TIMETABLE CONSIDERATIONS**

Submissions of Applications are confined to strict deadlines set by the OOGEDT. These deadlines are posted annually in the *Texas Register*. Currently, the OOGEDT has set deadlines for the first day of every third month, as follows:

Quarterly Deadline	90-Day Window
06-01-2010	01-20-2010
09-01-2010	04-26-2010
12-01-2010	07-20-2010
03-01-2011	10-15-2010

\* \* \* \* \*

For additional information regarding the Texas Enterprise Zone Program, please contact:

Mr. Adam Glatz  
Ryan  
Credits and Incentives Practice – Austin, Texas  
Phone: 512.476.0022  
E-mail: sharon.welhouse@ryanco.com or adam.glatz@ryanco.com