

Audit Procedures for Enterprise Zones & Qualified Hotel Projects

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Chapter 1

Introduction

Enterprise Project, Defense Readjustment Project, and Qualified Hotel Project claims are claims for refunds of state sales and use tax paid by qualified businesses that create new jobs or retain existing jobs and make capital investments in areas of economic distress. These projects provide communities with an economic development tool to offer state and local incentives to new or expanding businesses in these designated areas. No local taxes are eligible for refund under the program.

The Economic Development & Tourism (EDT) Division of the Governor's Office administers the program, approves the applications for projects, and provides community and business assistance for this program. The Comptroller is responsible for verifying the sales and use tax paid on qualifying items and the jobs created or retained that are submitted for refund.

Designated projects are eligible to apply for state sales and use tax refunds on qualified expenditures. The level and amount of refund is related to the capital investment and jobs created at the qualified business site. The Legislature has made changes over the years to the program, as noted throughout the manual. Here are the current factors that determine the amount of any refund that may be received:

Level of Capital Investment	Maximum Number of Jobs Allocated	Maximum Potential Refund	Maximum Refund Per Job Allocated
\$40,000 - \$399,999	10	\$25,000	\$2,500
\$400,000 - \$999,999	25	\$62,500	\$2,500
\$1,000,000 - \$4,999,999	125	\$312,500	\$2,500
\$5,000,000 or more	250	\$625,000	\$2,500
\$5,000,000 - \$149,999,999	500	\$1,250,000	\$2,500
Double Jumbo Project: \$1,500,000 - \$249,999,999	500	\$2,500,000	\$5,000
Triple Jumbo Project: \$250,000,000 or more	500	\$3,750,000	\$7,500

Disclaimer: This procedure manual has been written for the auditor. It is to be used as a training tool and as a reference guide. References to hearings, letters, rules, and statutes are given when needed.

The information is provided for guidance to field auditors and is subject to change due to administrative hearings and actions of courts or the legislature. The policy on the issues is currently under review.

Users of this manual are responsible for any changes, which occur after the printing of the manual. Before relying on this information, the taxpayer and other users should verify the current status of any information by contacting the Comptroller of Public Accounts. Call toll free statewide at 800-531-5441 or in Austin at 512-463-4600.

Chapter 2

The Process

In order for a qualified business in an enterprise zone or defense readjustment zone to obtain a refund of state sales and use taxes, the business must first be designated as an enterprise project, fulfill the requirements for obtaining the state benefit, complete the job certification process, and request a refund of state taxes on qualifying items.

The steps consist of the following:

1. City/county nominates a business for an enterprise project and applies to the Office of the Governor – Economic Development & Tourism Division (OOG-EDT) for designation.
2. The OOG-EDT determines the designation date, expiration date, 90-day window date, the number of allocated jobs for the project, 18-month certification deadline and sends an approval letter to the qualified business.
3. The qualified business sends an Application for Program Benefits to the Comptroller, which includes a job certification report.
4. The Comptroller verifies the job certification and notifies the qualified business of the number of jobs certified and maximum potential tax credits created based on the jobs certified.
5. The qualified business sends the sales and use tax refund claim to the Comptroller.
6. The Comptroller verifies the sales and use tax refund claim form and processes the approved amount of the refund.
7. The Comptroller verifies the jobs for the initial job certification claim period and a separate retention period. The initial job certification claim period must be verified prior to processing the refund claim. The retention period may be verified during the refund claim verification process or subsequent to the refund being issued. Any loss in the number of jobs approved for refund during the retention period may result in a recapture of the tax, plus penalty and interest.
8. At the end of the project, the Comptroller verifies the level of capital investment was met. Not meeting the required level of capital investment will result in recapture of any refunds overpaid plus penalty and interest.

Project

- 90-day window date: new employees must be hired on/or after this date; retained jobs must have existed prior to this date; invoices for eligible purchases must be dated on or after this date.
- Designation date: the date the project was approved for designation by OOG-EDT. For projects designated before 06/15/07, retained employees must have been hired prior to this date.
- Claim period for job certification: a period of 12 consecutive months that must start on or after the 90-day window date and end before the Expiration Date.
- Job certification: must be submitted to the Comptroller prior to the job certificate deadline. The Job Certification list is included with the Application for Program Benefits.
- Sales and use tax refund: must be submitted to the Comptroller prior to the refund claim deadline. This deadline is the same as the job certification deadline.
- Expiration date: up to 5 years after the Designation Date.
- Job certification and refund claim deadline: 18 months after the Expiration Date.

- **Level of Capital Investment:** for projects designated on or after 09/01/03, the Comptroller must verify that the required level of capital investment was met for the project's designation status (half, single, double jumbo, triple jumbo), amount allowed per job, and number of jobs allocated.

Job Certification

After the project has been designated, the qualified business must go through a job certification process before obtaining the sales and use tax refund.

The qualified business may obtain a sales and use tax refund upon completion of an audit performed by the Comptroller that certifies the hiring commitments and eligible purchases made by or on behalf of the qualified business.

Additionally, before obtaining a refund, the qualified business must submit to OOG-EDT a certified report of the actual number of jobs created or retained, and the capital investment made at or committed to the qualified business site.

The enterprise or defense readjustment project must certify the jobs qualifying for refund prior to receiving a refund of state sales and use tax. The following requirements must be met:

1. Approval from OOG-EDT for project designation, period of designation, and the number of new and/or retained jobs allocated for refund.
2. Selection by the project of a twelve-month window to use as the Claim Period for certifying the jobs for which refund is to be sought.
3. Submission by the project of an Application for Program Benefits to the Comptroller, along with the applicable documentation as required by the application.
4. Approval from the Comptroller for a specified number of new and/or retained jobs for certification. Refund of state sales and use tax is limited by this approval.

The Claim Period

The qualified business selects a 12-month period within the designation period, referred to as the "claim period", during which the qualified business must show that the correct number of jobs were filled and employees provided at least 1820 hours of employment within the claim period.

If there has been turnover in any job position, the total number of hours worked by all employees in that job position during the claim period is added together. The total must equal or exceed 1,820 hours. The hours of employment are to be shown for the claim period only. When hours are added together, the hours of the succeeding employee can only begin after the termination date of the original employee.

The job certification claim period must begin on or after the 90-day window date and end no later than the expiration date of the project.

The jobs included in the job certification for a particular claim period will be maintained separately from those on subsequent applications with new claim periods.

New Jobs

New jobs are positions created on or after the 90-day window date of the project, that have provided at least 1,820 hours of employment annually. The employees filling the new jobs, or turnover in retained jobs, may

not be counted towards the certification requirements if they have been transferred from the qualified business' other facilities in Texas.

Guidelines for Employees who are Economically Disadvantaged (ED) or Residents of an Enterprise Zone in Texas (EZR)

At least either 25% or 35% of the employees filling New Jobs must qualify as either ED, EZR, or veterans.

Projects located within an enterprise zone have the 25% requirement whereas projects located outside an enterprise zone must meet the 35% requirement. The applicable percentage will be determined by OOG-EDT.

- Retained employees who remain in the same position during the entire project period are not subject to the ED/EZR/veterans qualification. When there is turnover in the retained position, the replacement employee is considered a new employee and is subject to the ED/EZR/veterans qualification requirement. This applies to turnover during the job certification claim period and throughout the retention period.
 - » Example: Of the 100 jobs retained, 12 had turnover; therefore at least 3 of the employees hired in the turnover positions must qualify as ED/EZR/veterans to meet 25% or 4 employees to meet the 35% thresholds.
- An employee may only be counted once for the ED/EZR/veterans qualification, even if they qualify in both categories. The enterprise project must choose which designation they wish to claim.

To determine whether an employee is a resident of an enterprise zone, go to www.texassitesearch.com. Click on Enterprise Zone Finder. Enter the employee's home address in the Enterprise Zone Lookup box. Enterprise zones are updated with each census.

An employee qualifies for the ED designation if any of the following are true:

- (1) was unemployed for at least three months before obtaining employment with the qualified business; or
- (2) receives public assistance benefits, including welfare payments or food stamps, based on need and intended to alleviate poverty; or
- (3) is a low-income individual, as defined by Section 101, Workforce Investment Act of 1998 (29 U.S.C. Section 2801(25)); or
- (4) is an individual with a disability, as defined by 29 U.S.C. Section 705(20)(A); or
- (5) is an inmate, as defined by Section 498.001; or
- (6) is entering the workplace after being confined in a facility operated by or under contract with the Texas Department of Criminal Justice for the imprisonment of individuals convicted of felonies other than state jail felonies; or
- (7) has been released by the Texas Youth Commission and is on parole, if state law provides for such a person to be on parole; or
- (8) meets the current low income or moderate income limits developed under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f et seq.); or
- (9) was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday.

Retained Jobs

These are jobs that were in existence prior to the 90-day window date, have provided at least 1,820 hours of employment annually, and are intended to exist for at least three years after the ending date of the claim period or through the duration of the project's designation period, whichever is longer.

Requirements for New/Retained Jobs

- Performs at least 50 percent of the person's service for the business at the qualified business site, or if the person engages in the transportation of goods or services, the person reports to the qualified business site and resides within 50 miles of the qualified business site in this state.
- These new or retained employees must be permanent employees of the qualified business. Leased or contract employees may not be counted.
- An individual transferred to the enterprise project site from another Texas facility of the qualified business cannot be counted as a new employee. There is no refund allowed for moving an existing job from one Texas city to another within the state.
- Seasonal, temporary, or part-time jobs not considered to be permanent jobs are not eligible for refund.

Job Position Changes/Job Title Changes

If an employee in a new or retained job is replaced by another employee with a different job title, the enterprise project must confirm that this is a change in job title only, and not a change in job function and description. For example, if an employee is an Administrative Secretary 1 and is promoted to an Administrative Secretary 2, this would be considered a change in job title only. If the job description has substantially changed, the original job position has therefore been eliminated and no longer qualifies.

Jobs Open/Unfilled

If the job position is open and unfilled at the end of the Claim Period, the position will be disqualified unless the qualified business can show that the position was refilled within four (4) months of termination of the former employee and can continue to meet the 1,820-hour requirement during the retention period.

Job Certification Listing

The qualified business must submit a spreadsheet listing the following:

- Claim Period beginning and ending dates.
- Indicator if jobs are new or retained.
- Job Position number and title.
 - » This numbering system must remain consistent in all subsequent documents submitted for certification.
 - » The original employee in the position should be the primary number, i.e. Job #9. If this employee is replaced by another, the subsequent employee becomes designated as #9A, or #9B, etc.
- Names of employees
- Social Security number (if desired, the enterprise project can assign a unique employee ID number to use on the spreadsheet and then attach another spreadsheet with the unique number and Social Security number).
- Date of hire/termination/transfer in or out. These are the dates the employee was hired, terminated or transferred.
- Payroll amounts for the claim period
- Number of hours worked only during the claim period. If there has been turnover in the position during the claim period, the total number of hours worked by the employees should be listed separately and then totaled for the claim period.
- Indicator of claim for ED/EZR/veterans qualification on the employee.
 - » Documentation of ED/EZR/veterans qualification is required on all new jobs, which includes turnover positions in retained jobs.

- » Residency must be established by written confirmation on the governing body’s letterhead confirming that the addresses of the employees are within an enterprise zone. The written verification must list the addresses which are being certified.
- » Economic disadvantage is established by completion of a post-employment form signed by the employee, certifying one or more of the statutory criteria for economic disadvantage. This information is verified by Audit Headquarters. It is not necessary for the auditor to verify the ED status.
- Date that the spreadsheet was prepared
- Page numbers, _____ of _____

An example of a Job Listing spreadsheet for the claim period follows:

Taxpayer Name: _____

Taxpayer Number: _____

Enterprise Project Name: _____

Enterprise Project Number: _____

Designation Date: _____

Jobs submitted: New # _____ Retained # _____

Job #	Title	Employee Name	Employee Unique Number	Date of Hire	Date of Termination	Claim Period Hours	Claim Period Payroll	EZ	ED
1									
2									
3									
3a									
4									

An example of a Job Listing spreadsheet for the retention period follows:

Taxpayer Name: _____

Taxpayer Number: _____

Enterprise Project Name: _____

Enterprise Project Number: _____

Designation Date: _____

Jobs submitted: New # _____ Retained # _____

Date prepared: _____ Page _____ of _____

Job #	Title	Employee Name	Employee Unique #	Date of Hire	Date of Termination	Claim Period Hours	Claim Period Oayroll	Yr. 1 Hours	Yr. 1 Payroll	Yr. 2 Hours	Yr. 2 Payroll	Yr. 3 Hours	Yr. 3 Payroll	EZ	ED
1															
2															
3															
3a															
4															
5															
5a															
5b															
6															

If there has been turnover in a position and it has been refilled, show the position as the same job number but with an alpha suffix, i.e. Job #3, refilled with #3a, etc.

Qualified Hotel Projects

The owner of a qualified hotel project shall receive a refund of 100% of the sales and use taxes paid or collected by the qualified hotel project, or business located in the qualified hotel project, during the first ten (10) years after such qualified hotel project is open for initial occupancy. The hotel may also receive a refund of 100% of the hotel occupancy taxes paid by persons for the use or possession of or for the right to the use or possession of a room or space at the qualified hotel project, for the first ten (10) years after the hotel is open for initial occupancy. *(Tax Code 151.429(h))*

Chapter 3

The Refund Request

If the enterprise project has met all the statutory qualifications as a qualified business, and the statutory requirements for new and retained jobs, the qualified business may apply for a refund of state sales and use taxes paid on qualifying items. No local taxes are to be refunded under the program.

The claim for refund for sales and use taxes must be submitted to the Comptroller not later than 18 months after the date on which the project's designation expires. All refunds which have been paid to the enterprise project without field auditor verification are subject to audit and will be examined. These refund verifications will include all refunds granted during the life of the project. Comptroller will verify the refund requested. Payments of refunds are limited to a maximum of \$125,000 in each state fiscal year for half designations, \$250,000 for single projects, \$500,000 for double jumbo projects and \$750,000, \$125,000 for triple jumbo projects.

If the Comptroller determines that the enterprise project has not invested the minimum capital investment for the tier in which it was approved, the number of jobs qualifying for benefit will be reduced to the tier in which the capital investment falls. This will result in recapture of excess refunds paid plus penalty and interest.

Qualifying Items

The enterprise project is eligible for a refund of state sales and use taxes imposed on the purchases of qualifying items. Qualifying items are all taxable items on which tax was paid to a permitted vendor or remitted directly to the Comptroller's office and used and consumed at the project site. Invoices must be dated on or after the 90-day window date and before the Expiration Date of the project. The items must be used and consumed at the enterprise project site and either state sales and use taxes must have been paid to a permitted vendor, or must have been accrued and remitted by the qualified business to the Comptroller.

Requesting a Refund

The enterprise project must submit a detailed refund claim and spreadsheet to the Comptroller requesting a refund of the state sales and use taxes on eligible purchases. One refund claim form can be submitted for all years for which invoices are being submitted or the project can submit multiple claims during the allowed timeframe.

The spreadsheet must list all invoices on which a refund is being claimed, separated by fiscal year. The spreadsheet must document:

- Invoice date (must be on or after the 90-day window date)
 - » Use the invoice date, not payment date. If a separate new construction contract was signed prior to the 90-day window date, and progress billings were made, only those amounts invoiced on or after the 90-day window date are eligible.
- Invoice number
- Vendor

- Description of item
 - » Items must be eligible under the statute
 - » Items listed for refund must be exclusively used and consumed at the enterprise project site.
- Amount
- State sales and use tax amount
 - » If the vendor was permitted but did not remit the tax on the invoice, the refund should be allowed and the vendor should be scheduled for audit. If tax was paid to the vendor, the vendor's sales tax permit number or information that allows the Comptroller to identify the number must be included.

The refund claim will be assigned to the appropriate audit field office for verification where the source documents will be examined and verified. If approved, the refund claim will be processed, subject to the appropriate refund limitation amount for the fiscal year. The maximum amount refunded per fiscal year is \$125,000 for half designations projects, \$250,000 for single projects, \$500,000 for double jumbo projects and \$750,000 for triple jumbo projects. Any remaining amount is carried forward to the next fiscal year. If all or any portion of the refund claim is denied, a denial letter will be sent to the enterprise project.

The refund is conditioned upon the enterprise project maintaining at least the same level of employment of qualified employees as existed at the time it qualified for a refund for a period of three (3) years from that date. For projects designated on or after 06/15/07, the time frame for retained jobs is three years after the claim period or the length of the designation, whichever is longer. For new jobs, the auditor should request guidance from Audit Headquarters.

The auditor verifying the sales and use tax refund will also check the job information. If any of the jobs for which a refund were received are no longer maintained or providing the 1,820 hours of employment per year, the auditor will make an assessment for taxes, penalty, and interest to recoup the refund on those jobs that no longer exist or do not meet the required hours. (See Chapter 7 for recapture of tax.)

Items can only be submitted for refund once and may not be claimed for multiple purposes. For example, an item cannot be claimed as exempt as manufacturing equipment and then again because it was purchased for use in an enterprise project. Any duplication of such items will be disallowed.

Refund verifications will include verifications of refunds that had not previously been verified by field examination.

If there is more than one taxpayer entity involved in the enterprise project, the Comptroller will determine who actually paid the sales and use tax and who is, therefore, eligible to receive the refund.

Refund claims under the enterprise project are not subject to credit interest provisions.

3% Administrative Fee

For projects designated on/after 9/1/03, when the total amount to be refunded to the qualified business is calculated, 3% of the tax refund must be calculated and deducted by Revenue Processing for deposit to the bank fund. The remainder will be refunded to the qualified business. (Govt. Code Sec. 2303.504)

Chapter 4

Audit Procedures For Job Verification

Review of Job Certification by Audit Headquarters

The job certification submitted by a project will first be reviewed in Audit Headquarters. The review will include, but not be limited to, the following:

- The approvals and allocations made by OOG-EDT for the enterprise project
- The listing of retained job positions submitted in the project application
- The detailed information submitted by the enterprise project for the job certification for new/retained jobs
- Documentation substantiating ED/EZR/veterans qualification
- Data from the Texas Workforce Commission records

If the documentation submitted for job certification does not appear to meet the 25% or 35% threshold for ED/EZR/veterans, or the minimum hours of employment annually, the Comptroller will reduce the number of qualified positions for refund accordingly.

The job certification completed in Audit Headquarters is subject to verification by the field auditor during the refund verification process.

Review of Job Certification by Field Auditor

Pre-Audit Research

- The refund will be generated under Tax Code 83. Check Agency Work Manager for other Tax Code 83 refunds.
- Verify tax was not already refunded to the taxpayer by checking XIREFS and MTIGDI.
- Determine whether any other audit of the taxpayer is in progress.
- Send a 30-day letter requesting records to perform the audit. For job certification verification, these records will include an updated schedule of hours worked by employees and payroll data.
- Identify all participating entities. It is possible that one qualified business might hire the employees but a participating entity pays the bills. In this instance, if there is not a participating entity listed on their project's application to the OOG-EDT, the refund will be denied. The taxpayer can amend their application to the governor's office to include more entities.

Audit Procedures

- Check the hire date and number of hours worked using payroll records. The hire date for new jobs must be on or after the 90-day window date.

If an employee is terminated and replaced, check the replacement hire date and number of hours worked. The original employee plus the replacement employee must meet the 1,820 hours for the 12-month period criteria. Also, make sure the replacement employee's hire date is close to the termination date of the original employee. If these dates are more than four months apart, you might question whether the second employee was actually hired to replace the first employee.

- Count paid vacation, paid sick leave, overtime, and paid holidays toward the 1,820-hour qualification. (Also, count paid military leave when paid by the project.)
- Check replacement employees to verify they were hired to perform the same duties as the original job employee.
- Check replacement employees to verify they were not transferred in from another plant that is not part of the enterprise project.
- Check for time overlaps between the termination of employee #1 and the start date of employee #2. Hours for employee #2 may only be counted after the termination of employee #1.
- Verify that the employee spent 50% of their time at the project site. For example, an employee with a job title such as delivery truck driver might not spend 50% of his/her time at the project site. Travel vouchers or expense reports might be used to verify this information.
- Check the ED/EZ criteria for replacement employees considered to be new jobs. The website www.texassitesearch.com can be used to verify the residency requirement. The Post-Employment Employee Certification form can be used to verify the economically disadvantaged requirement.

Special Situations

- Sometimes an employee receives a promotion and new job title but they are still performing the same job duties. For example, an employee shown as an Administrative Technician 1 during year one might have a job title of Administrative Technician 2 during the second year of the claim. This is not a problem because the employee is still working as an administrative technician. However, an employee cannot be listed as an electrician in year one and changed to a plumber in year two; the nature of the job has changed at this point.
- An employee cannot fill two positions at the same time. For example, the president of the qualified business cannot fill in as the sales manager until a new sales manager is hired. His/her hours must be shown as the president OR the sales manager but cannot be shown for both positions.

Common Errors

There are several errors that are found frequently during the job verification. They include but are not limited to:

1. The same employee is listed for more than one job title.
2. A position listed in one year's payroll is not listed in the subsequent year's payroll.
3. A replacement employee's hours were counted before the termination of the original employee.
4. An employee's position on the spreadsheet does not match their description on the payroll records.
5. The taxpayer does not provide replacement employee information requested by the auditor.
6. The taxpayer is unable or unwilling to prove that the replacement employee held the same position as the original employee.
7. On subsequent refunds, termination dates and hours worked did not match the numbers on the original refund claim.

Review of Jobs

As a general rule, the auditor should perform a detailed review on the job verification. Guidelines were created to provide consistency in the way large projects are reviewed. After detailing every position in the initial claim period and verifying all retained positions were indeed retained throughout the project period, the auditor should detail all replacement jobs.

Chapter 5

Audit Procedures for the Refund Request

Pre-Audit Research

- Verify tax was not already refunded to the taxpayer using XIREFS and MTIGDI.
- Determine whether any other audit of the taxpayer is in progress.
- Send a 30-day letter requesting records to verify the purchases such as:
 - » copies of invoices;
 - » proof of payment or accrual;
 - » transaction-level detail of miscellaneous income account to determine whether refunds were received and coded to this account; or
 - » tax accrual account through the current period.
- Determine whether there are any participating entities. A participating entity is a member of a controlled group that is necessary to the project or activity. The auditor may verify this information by viewing the imaged copy of the Governor's letter to the enterprise project on Agency Work Manager.

Audit Procedures

- Verify that the invoice date is on or after the 90-day window date and before the project expiration date.
- Verify that the purchase was used and consumed at the enterprise project site.
- If the vendor was permitted but did not remit the tax on the invoice, the refund should be allowed but the vendor should be schedule for audit.
- Only refund state tax. No local tax is refunded through these programs.
- Do not apply credit interest.
- Only allow a refund of tax paid on taxable items.
- Deny claims for sales tax paid on lump-sum new construction contracts.

Special Situations

- If a separate contract was signed prior to the 90-day window date and progress billings were made, only those invoiced after the 90-day window date are eligible.
- Taxpayers may receive credit for taxes paid on purchases for a building they do not own as long as the building is located in a qualifying site (e.g., they rent the building).

Common Errors

There are several errors that are found frequently during refund verification. They include but are not limited to the following:

1. The accrual cannot be traced to the summary records.
2. The item was not used at the designated location.
3. Tax was not paid on the item requested.
4. The tax accrual account was not provided.
5. The taxpayer took the vendor discount but requested the full amount of the invoice.
6. The item was already requested in another refund.

7. The sales and use tax audit is being performed by another auditor and credit is being given in that audit.
8. A credit memo was issued for the item requested.
9. The item was purchased outside the 90-day window date.
10. The tax requested is not sales and use tax (e.g., fuels tax).
11. Requested items are duplicated on subsequent or previous claims.
12. The purchase was made for a related entity or for an individual employee.

Sampling the Refund Request

Refund requests for Enterprise Projects are handled in the same manner as all other refunds. The taxpayer may present a detailed claim so voluminous that it is more cost effective for the refund to be sampled. Auditors should refer to Chapter 3 of the Sampling Manual for dollar-stratified samples. Minimum sample sizes are required as in any other audit. For manual samples, the auditor should refer to Chapter 4 of the Sampling Manual.

Taxpayers cannot submit a sampled refund request.

Notify Audit Headquarters When the Maximum Refund Amount is Verified

The auditor will notify Audit Headquarters if the maximum purchases are verified in a claim prior to the expiration of the project. Include the project number, taxpayer number, and taxpayer name.

Chapter 6

Write-Up

Write-up for Enterprise Refunds follows the same guidelines as other refunds but with a few exceptions, primarily that schedules are completed by state fiscal year. Also, **the project number must be included on every document in the audit package in addition to the taxpayer number.**

- Enterprise Worksheet for RPC
 - » This is located at O:\2145\Enterprise Refunds. The auditor will complete all sections highlighted in yellow, print and place on top of the audit package. It is not included in the index.
- Refund Cover Letter
 - » Make sure to include a denial statement indicating why the requested amount was reduced, if applicable. This should include, but is not limited to, deductions due to state sales and use tax denied, jobs/positions denied and timely filer discounts. The enterprise project number should be included in the letter. The first sentence of the cover letter should state, “Our review of your Enterprise Project refund request, conducted in accordance with State and Local Sales and Use Tax statutes as administered by the Comptroller, is complete.”
 - » If jobs were not verified, the following statement must be added to the cover letter:
 - “The verification of jobs was not completed at this time. We reserve the right to complete the verification at a later date. The jobs which were certified must remain filled and providing at least 1,820 hours of employment for each year of the retention period. If any positions were eliminated, unfilled, or provided less than the minimum hours of employment in any year, these positions will be disqualified. The Comptroller may assess the portion of the refund attributable to such decrease in employment, including penalty and interest from the date of the refund. (Tax Code Section 151.429e(5)(g))”.
 - » If capital investment was not verified, the following statement must be added to the cover letter:
 - “The verification of capital investment was not completed at this time. We reserve the right to complete the verification at a later date.”
 - » Use both statements if both the jobs and capital investment were not verified.
- Index: List the documents in the audit package in the order shown below.
- Tax Adjustment Summary» Total by state fiscal year. If using CATS E&T, print the Tax Summary by period (label as Tax Adjustment Summary and as Page 1) and manually total each fiscal year. Also, include the actual Tax Adjustment Summary as Page 2.
 - » If the amount requested/submitted exceeds the maximum for the project, only verify up to the maximum.
- See chart below for amount allowed for each job.
- Defense projects are always \$2,500 per job.

Designation Date	Tax Refund Allowed for Each New Permanent Job Created or Retained Within the Project
Prior to 9/1/01	\$2,000 per job, maximum number of jobs 625
9/1/01 to 8/31/03	\$5,000 per job, maximum number of jobs 250 or a number equal to 110% of the anticipated new or retained jobs, whichever is less
On or after 9/1/03	\$2,500, \$5,000, or \$7,500 per job based on capital investment (see additional information below)

For projects with a designation date on or after Sept. 1, 2003, a capital investment at the qualified business site of:

- **\$40,000 to \$399,999** will result in a refund of up to \$2,500 per job with a maximum refund of \$25,000 for the creation or retention of 10 jobs; \$400,000 to \$999,999 will result in a refund of up to \$2,500 per job with a maximum refund of up to \$62,500 for the creation or retention of 25 jobs;
- **\$1,000,000 to \$4,999,999** will result in a refund of up to \$2,500 per job with a maximum refund of up to \$312,500 for the creation or retention of 125 jobs;
- **\$5,000,000 or more** will result in a refund of up to \$2,500 per job with a maximum refund of up to \$625,500 for the creation or retention of 250 jobs;
- **\$5,000,000 to \$149,999,999** will result in a refund of up to \$2,500 per job with a maximum refund of up to \$1,250,000 for the creation or retention of 500 jobs;
- **\$150,000,000 to \$249,999,999** will result in a refund of up to \$5,000 per job with a maximum refund of up to \$2,500,000 for the creation or retention of 500 jobs (Double Jumbo Enterprise Project); or
- **\$250,000,000 or more** will result in a refund of up to \$7,500 per job with a maximum refund of up to \$3,750,000 for the creation or retention of 500 jobs (Triple Jumbo Enterprise Project).

Effective Sept. 1, 2015; Section 2303.407 (b)(5)(6) was amended to emphasize stronger incentives for job creation by allowing double jumbo and triple jumbo designations to be used only for projects creating new jobs in economically disadvantaged communities.

- Supporting Exams – Use either Excel spreadsheets or WATS.
 - » Include totals by fiscal year.
 - » Include a list of denied items as a supporting exam or as an exhibit.
 - » Make sure no invoices are included prior to the 90-day window date.
- Exhibits – Include the following:
 - » Notifications, if applicable
 - » Power of attorney/letter of authorization, if applicable
 - » Original job certification – Include when no job verification is done.
 - » Verified job certification – Include a separate list or spreadsheet with a list of jobs verified and approved titled “Approved Job List.” Also, include a separate exhibit with a list of jobs disapproved/denied titled “Disapproved Job List.”
 - » Footnotes
- Refund Plan
 - » Make sure the job verification is addressed.
 - » If sampling was used, document the procedures.
 - » Due to the nature of these refunds (multiple refund requests, multiple job claims), it is imperative that the auditor make detailed notes regarding what was reviewed, approved, and denied. A subsequent auditor might need to refer to these notes when examining a separate claim.

Chapter 7

Verification Procedures after the Project Expiration Date

Per Government Code Subchapter F, Section 2303.401, retained jobs must exist for the longer of the duration of the project's designation period or three years after the expiration date of the claim period for receipt of a refund. For new jobs, the auditor should request guidance from Audit Headquarters.

The positions which were certified must remain filled and provide at least 1,820 hours of employment for the retention period. If any positions were eliminated, unfilled, or provided less than the minimum hours of employment in any year, these positions will be disqualified.

For job verification, payroll registers may be examined to see if employees are still on the payroll. An on-site visit may also be used to see if employees indeed are working at the enterprise project site.

If the level of qualified employees has not been maintained, the Comptroller may assess the portion of the refund attributable to such decrease in employment, including penalty and interest from the date of the refund. (*Tax Code Section 151.429e(5)g*)

If the Comptroller requests additional information on a refund claim, the taxpayer must respond to this request no later than 60 days from the date of the request. If the response is not received or is incomplete, the refund may be denied.

If the Comptroller makes an assessment to recapture a refund, and the 3% administrative fee had been deducted when the refund was processed, then the recapture of tax will be adjusted for 3%.

The Comptroller has four years from the date the refund was paid to recapture refunds erroneously paid. (*Tax Code Section 111.108*)

Verification of Capital Investment

The Comptroller's Office has the responsibility of verifying capital investment on projects with a designation date on or after Sept. 1, 2003.

In order to maintain the project designation, the level of capital investment must be reached; for example, a project designated as a Double Jumbo Project pledged to spend an amount no less than \$1,500,000 but up to \$249,999,999 on capital investments. The money must have been paid not earlier than the 90-day window date but before the project expiration date. If this level of capital investment is not reached, the project designation level will be dropped to the applicable level.

Capital expenditures include purchases of capital or fixed assets including land, buildings, construction labor, renovations or remodels to capital assets, furniture, fixtures, machinery, computers, software programming, and other machinery and equipment. Property that is leased under a capitalized lease is considered a qualified capital investment, but property that is leased under an operating lease is not considered a qualified capital investment.

Normally, expenditures for routine and planned maintenance required to maintain regular business operations are not considered qualifying capital expenditures. Effective Nov. 10, 2011, expenditures for routine and

planned maintenance required to maintain regular business operations are only considered qualified capital investment if there will be a measurable increase in production capacity, or if the expenditures will result in increased productivity which may be expressed as a decrease in the overall cost per unit produced and are limited to 40 % of the total capital investment spent at the qualified business site. If the expenditures exceed 40% of the total capital investment, the expenditures up to 40% of the total capital investment are allowed.

The expenditures must be capitalized. Prior to Nov. 10, 2011, there is no limitation on the amount.

It is the interpretation of the Office of the Governor that capital investment may include salaries for employees of the qualified business during periods of time in which the plant is shut down for retooling, if the employees are directly involved in the retooling. This interpretation is meant to apply only to enterprise projects approved prior to Nov. 10, 2011. Enterprise projects approved on or after Nov. 10, 2011 are to use the current definition of capital investment which does not include employee salaries during periods of down time related to plant retooling.

FVAR for Recapture of Tax

An FVAR (Field Verified Adjustment Report) will be generated for Tax Code 26 to recapture an overpaid refund for Tax Code 83. Per Chapter 67 of the AWM Users Guide, Headquarters approval is required for non-Franchise FVAR generation. Field office management should request approval **via e-mail** from David Rock, Emma Fuentes or Ping Hu. When making the request, management should be prepared to explain why a full audit is not warranted. Upon receiving approval via e-mail from Headquarters, field office management should generate the FVAR. The e-mail from Headquarters granting the FVAR generation approval should be included in an AWM *Assignment Comment*, (NOT a Notes to Reviewer comment.) Failure to include the e-mail in AWM will lead the RPC to assume prior approval had not been obtained and to return the FVAR to the field office. (See AP Memo 120)

Audit Write-Up for FVARs

Include the following items in the refund package to the Eules Processing Center:

- RPC worksheet located at O:\2I45\Enterprise Refunds
- Modified FVAR P&I Waiver Worksheet (under Word templates for franchise tax)
- Modified FVAR Cover Letter (under Word templates for franchise tax)
- Exam Report
- Index (include line for Adjustment Report – this one completed by RPC)
- Audit Adjustment Report - Misc. Taxes (manual form completed by auditor)
- Tax Adjustment Summary by Fiscal Year
- Tax Adjustment Summary by Authority/Period
- Supporting Exams (can also include Excel spreadsheets if needed)
 - » Schedule as of the date the check was issued (check issued that includes amount being recaptured) if due to a recapture based on amount refunded in error
 - » Schedule as of the date the most recent check was issued if recapture is due to a reduction in the number of approved jobs
- Supporting Exam Spreadsheets
- Exhibits – should include complete listing of jobs verified/denied
- Audit Plan (CATS plan noting that it is for an FVAR) – The audit plan should clearly describe the reason for adjustments. For example, it should state whether the jobs were not maintained or whether the level of capital investment was not met.

Additional information can be found in AP 120.