

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**

7
8 **ON AUGUST 9, 2022, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
9 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

10
11 Publication Date of the Proposal in the *Texas Register*: **August 26, 2022**

12 End of Comment Period: **September 26, 2022**

13
14 The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter
15 800, relating to General Administration:

16
17 Subchapter M. Tax Refund for Wages Paid to Employee Receiving Financial Assistance,
18 §§800.550 - 800.557

19
20 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

21 The purpose of proposed new Chapter 800, Subchapter M is to establish administrative rules to
22 clarify the requirements and eligibility determination applicable under Texas Labor Code,
23 Chapter 301, Subchapter H, relating to Tax Refund for Wages Paid to Employee Receiving
24 Financial Assistance.

25
26 Senate Bill (SB) 82, enacted by the 73rd Texas Legislature, Regular Session (1993), amended
27 Texas Human Resources Code, Chapter 31 by adding Subchapter D, Tax Refund for Wages Paid
28 to Employee Receiving Financial Assistance (Tax Refund Program). The Tax Refund Program
29 required the Texas Department of Human Services (DHS) to provide tax vouchers to persons
30 upon application and certification of eligibility.

31
32 In 1997, the 75th Texas Legislature enacted SB 1113, which transferred the Tax Refund Program
33 from the Texas Human Resources Code, Chapter 31, Subchapter D to Texas Labor Code,
34 Chapter 301, Subchapter H, effectively moving the application eligibility and certification
35 procedures from DHS to TWC. SB 1113 also implemented new rulemaking authority, allowing
36 TWC to "adopt rules as necessary to carry out its powers and duties under this subchapter" and
37 required DHS to provide information to TWC that is required to determine eligibility for persons
38 applying for the Tax Refund.

39
40 The Comptroller of Public Accounts' rule under 34 Texas Administrative Code (TAC) §3.4,
41 implemented in 1995, was not amended when the program transitioned from DHS to TWC.
42 TWC did not establish rule to operate the Tax Refund Program. The application and eligibility
43 certification procedures related to the Tax Refund Program have been operated by TWC staff
44 since 1997 through publicly available information and a tax refund application form, currently
45 maintained on TWC's Work Opportunity Tax Credit Program Overview webpage.

1 The Comptroller's office is reviewing possible amendments to 34 TAC §3.4 that would eliminate
2 reference to eligibility determinations in its rule. TWC determined that the establishment of an
3 administrative rule to clarify the requirements and eligibility determination applicable under
4 Texas Labor Code, §301.107 is now needed.

5
6 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

7
8 **SUBCHAPTER M. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING**
9 **FINANCIAL ASSISTANCE**

10 TWC proposes new Subchapter M, as follows:

11
12 **§800.550. Purpose**

13 New §800.550 states the purpose and goal for Chapter 800, Subchapter M.

14
15 **§800.551. Definitions**

16 New §800.551 defines terms used in Chapter 800, Subchapter M.

17
18 **§800.552. Tax Refund Voucher**

19 New §800.552(a) states that TWC shall issue tax refund vouchers in the amounts allowed by and
20 subject to restrictions in Chapter 800, Subchapter M. New §800.552(b) states that a person
21 issued a tax refund voucher may apply for the tax refund.

22
23 **§800.553. Amount of Refund: Limitation**

24 New §800.553(a) states the maximum amount of the potential tax refund allowed per employee
25 that is certified under new §800.554 and §800.555. New §800.553(b) states that the refund
26 amount cannot exceed the amount of net tax paid by the person to the State of Texas after any
27 other applicable tax credits for the calendar year.

28
29 **§800.554. Eligibility**

30 New §800.554 describes the eligibility required for the tax refund. New §800.554(1) describes
31 the eligibility requirements regarding wages incurred by a person for service of an employee.
32 New §800.554(2) refers to the certification requirements in new §800.555, and new §800.554(3)
33 describes the options for a person to provide and pay a part of the cost for health care coverage.

34
35 **§800.555. Certification**

36 New §800.555 describes the time parameters for an employee to be receiving financial or
37 medical assistance prior to employment.

38
39 **§800.556. Application for Refund: Issuance**

40 New §800.556 identifies the time period, on or after January 1 and before April 1, for persons to
41 submit applications for the previous calendar year. New §800.556(b) gives TWC the authority to
42 promulgate the application for the tax refund voucher. New §800.556(c) limits the use of the tax
43 refund voucher to the year for which the voucher is issued.

1 **§800.557. Limitations.**

2 New §800.557(a) reinforces the requirement of health care coverage for the employee under new
3 §800.554(3). New §800.557(b) identifies rules of conveyance, assignment, or transfer of a refund under
4 Chapter 800, Subchapter M.
5

6 **PART III. IMPACT STATEMENTS**

7 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be
8 in effect, the following statements will apply:
9

10 There are no additional estimated costs to the state and to local governments expected as a result
11 of enforcing or administering the rules.
12

13 There are no estimated cost reductions to the state and to local governments as a result of
14 enforcing or administering the rules.
15

16 There are no estimated losses or increases in revenue to the state or to local governments as a
17 result of enforcing or administering the rules.
18

19 There are no foreseeable implications relating to costs or revenue of the state or local
20 governments as a result of enforcing or administering the rules.
21

22 There are no anticipated economic costs to individuals required to comply with the rules.
23

24 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
25 communities as a result of enforcing or administering the rules.
26

27 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
28 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
29 does not apply to this rulemaking.
30

31 **Takings Impact Assessment**

32 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
33 affects private real property, in whole or in part or temporarily or permanently, in a manner that
34 requires the governmental entity to compensate the private real property owner as provided by
35 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
36 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
37 would otherwise exist in the absence of the governmental action, and is the producing cause of a
38 reduction of at least 25 percent in the market value of the affected private real property,
39 determined by comparing the market value of the property as if the governmental action is not in
40 effect and the market value of the property determined as if the governmental action is in effect.
41 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
42 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
43 discussed elsewhere in this preamble, is to establish administrative rules to clarify the
44 requirements and eligibility determination applicable under Texas Labor Code, Chapter 301,
45 Subchapter H.
46

1 The proposed rulemaking action will not create any additional burden on private real property or
2 affect private real property in a manner that would require compensation to private real property
3 owners under the United States Constitution or the Texas Constitution. The proposal also will
4 not affect private real property in a manner that restricts or limits an owner's right to the property
5 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
6 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

7
8 Government Growth Impact Statement

9 TWC determined that during the first five years the rules will be in effect, they will not:

- 10 --create or eliminate a government program;
11 --require the creation or elimination of employee positions;
12 --require an increase or decrease in future legislative appropriations to TWC;
13 --require an increase or decrease in fees paid to TWC;
14 --create a new regulation;
15 --expand, limit, or eliminate an existing regulation;
16 --change the number of individuals subject to the rules; and
17 --positively or adversely affect the state's economy.

18
19 Economic Impact Statement and Regulatory Flexibility Analysis

20 TWC determined that the rules will not have an adverse economic impact on small businesses or
21 rural communities, as the proposed rules place no requirements on small businesses or rural
22 communities.

23
24 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
25 negative impact upon employment conditions in the state as a result of the rules.

26
27 Courtney Arbour, Director, Workforce Development Division, determined that for each year of
28 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
29 proposed rules will be to provide a tax refund incentive for persons to hire employees on
30 Medicaid or receiving Temporary Assistance for Needy Families benefits.

31
32 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
33 within TWC's legal authority to adopt.

34
35 **PART IV. COORDINATION ACTIVITIES**

36 In the development of these rules for publication and public comment, TWC sought the
37 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
38 policy concept for the new rules to the Boards for consideration and review on April 19, 2022.
39 TWC also conducted a conference call with Board executive directors and Board staff on April
40 22, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all
41 information gathered in order to develop rules that provide clear and concise direction to all
42 parties involved.

43
44 **PART V. PUBLIC COMMENTS**

45 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
46 and must be received no later than September 26, 2022.

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PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.107(a), which stipulates that TWC shall adopt rules as necessary to carry out its powers and duties under Chapter 301, Subchapter H.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 301.

1 period beginning with the date the employee begins work for the person and ending
2 on the first anniversary of that date.

3
4 (b) The refund claimed for a calendar year shall not exceed the amount of the net tax
5 paid by the person to the State of Texas, after any other applicable tax credits in that
6 calendar year.

7
8 **§800.554. Eligibility.**

9
10 A person is eligible for the refund for wages paid or incurred by the person, during each
11 calendar year for which the refund is claimed, only in the following circumstances:

12
13 (1) The wages paid or incurred by the person are for services of an employee who
14 is a:

15
16 (A) resident of this state; and

17
18 (B) recipient of:

19
20 (i) financial assistance or services in accordance with Texas Human
21 Resources Code, Chapter 31; or

22
23 (ii) medical assistance in accordance with Texas Human Resources
24 Code, Chapter 32;

25
26 (2) The person satisfies the certification requirements under §800.555 of this
27 subchapter; and

28
29 (3) The person, under an arrangement under Texas Human Resources Code,
30 §32.0422, provides and pays for the benefit of the employee a part of the cost
31 of coverage under:

32
33 (A) a health plan provided by a health maintenance organization established
34 under Texas Insurance Code, Chapter 843;

35
36 (B) a health benefit plan approved by the commissioner of insurance;

37
38 (C) a self-funded or self-insured employee welfare benefit plan that provides
39 health benefits and is established in accordance with the Employee
40 Retirement Income Security Act of 1974 (29 United States Code §§1001
41 et seq.); or

42
43 (D) a medical savings account or other health reimbursement arrangement
44 authorized by law.

1 **§800.555. Certification.**

2
3 A person is not eligible for the refund of wages paid or incurred by the person unless the
4 person has received a written certification from the Agency that the person's employee is
5 a recipient of:

6
7 (1) financial assistance within the six months prior to his or her start date; or

8
9 (2) medical assistance within the six months prior to his or her start date.

10
11 **§800.556. Application for Refund: Issuance.**

12
13 (a) A person may apply for a tax refund voucher for wages paid an employee in a
14 calendar year only on or after January 1 and before April 1 of the following calendar
15 year.

16
17 (b) A person must submit an application for the tax refund voucher on a form
18 promulgated by the Agency.

19
20 (c) On issuance of the tax refund voucher to the person by the Agency, the person may
21 apply the voucher against a tax paid by the person to this state only for the calendar
22 year for which the voucher is issued.

23
24 **§800.557. Limitations.**

25
26 (a) A person may only apply for a tax refund related to wages paid while the person's
27 employee was covered by health care coverage in accordance with §800.554(3) of
28 this subchapter and the cost of coverage was paid in full or in part by the person.

29
30 (b) A person may convey, assign, or transfer a refund under this subchapter to another
31 person only if:

32
33 (1) the employing unit is sold, conveyed, assigned, or transferred, in the same
34 transaction or in a related transaction, to the person to whom the refund is
35 conveyed assigned, or transferred; or

36
37 (2) the person to whom the refund is conveyed, assigned, or transferred:

38
39 (A) is subject to a tax administered by the comptroller and deposited to the
40 credit of the state General Revenue Fund without dedication; and

41
42 (B) directly or indirectly owns, controls, or otherwise directs, in whole or in
43 part, an interest in the person from whom the refund is conveyed,
44 assigned, or transferred.