

The Texas Education Agency (TEA) adopts an amendment to §61.1019, concerning additional state aid for ad valorem tax credits under the Texas Economic Development Act. The amendment is adopted without changes to the proposed text as published in the August 28, 2020 issue of the *Texas Register* (45 TexReg 6012) and will not be republished. The adopted amendment updates cross references to statute and modifies the method of filing requests for additional state aid for ad valorem tax credits.

REASONED JUSTIFICATION: Section 61.1019 implements the provisions of Texas Education Code (TEC), §48.254. Specifically, the rule addresses the procedures for filing a request for aid and describes the forms to be used to make a request for aid. The adopted amendment to subsection (d)(1) updates the method of filing from mail to electronic format to streamline the application process.

HB 3, 86th Texas Legislature, 2019, recodified TEC, Chapters 41 and 42, to Chapters 48 and 49, respectively. The adopted amendment to §61.1019 updates the statutory references to conform to the recodification.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 28, 2020, and ended October 12, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which authorizes the commissioner to adopt rules to implement and administer the provision of additional state aid under TEC, §48.254, including aid for school districts otherwise ineligible for state aid, in order to offset tax credits issued by school districts under the Texas Tax Code, Chapter 313; TEC, §48.254, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which entitles a school district, including a school district that is otherwise ineligible for state aid under TEC, Chapter 48, to state aid in an amount equal to the amount of all tax credits credited against ad valorem taxes of the district in that year under former Subchapter D, Chapter 313, Tax Code; and Texas Tax Code, Chapter 313 (the Texas Economic Development Act), which permits school districts to offer appraised value limitations on property and tax credits to certain capital-intensive industries that meet dollar and job creation requirements in order to encourage large-scale capital investments in Texas. School districts that have active agreements under the Texas Tax Code, Chapter 313, and that have companies subject to tax credits must net those credits against taxes paid.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.254, and Texas Tax Code, Chapter 313.

<rule>

**§61.1019. Additional State Aid for Ad Valorem Tax Credits under the Texas Economic Development Act.**

- (a) General provisions. This section implements the Texas Education Code (TEC), §48.254 (Additional State Aid for Ad Valorem Tax Credits Under Texas Economic Development Act). In accordance with the TEC, §48.254, a school district, including a school district that is otherwise ineligible for state aid under the TEC, Chapter 48, is entitled to state aid in an amount equal to the amount of all tax credits applied against ad valorem taxes of the school district in each year that tax credits were applied pursuant to the Texas Tax Code, Chapter 313, also known as the Texas Economic Development Act. School districts eligible to receive additional state aid under the TEC, §48.254, must apply to the commissioner of education in order to receive additional state aid equal to the qualifying ad valorem tax credits issued under the Texas Tax Code, Chapter 313, Subchapter D, as that subchapter existed prior to repeal by House Bill (HB) 3390, 83rd Texas Legislature, Regular Session, 2013, subject to certain annual limitations.
- (b) Definitions. The following phrases, words, and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.
  - (1) Eligible property--A term that has the meaning assigned in the Texas Tax Code, §313.024.
  - (2) Limitation on appraised value--A term that has the meaning assigned in the Texas Tax Code, Chapter 313. A school district may limit the appraised value on a qualified property for the purposes of ad valorem taxation for a period of eight tax years, beginning with the tax year that follows the applicable two-year qualifying time period. A limitation on appraised value applies

only to the maintenance and operations portion of a school district's ad valorem tax rate. For each tax year in which the limitation on appraised value is in effect, the appraised value of the qualified property that is described in the written agreement between the school district and taxpayer for school district maintenance and operations ad valorem tax may not exceed the lesser of the market value of the property or the amount to which the school district has agreed, but the limited amount must be at least the minimum amount of limitation that is set for the applicable school district category in the Texas Tax Code, Chapter 313.

- (3) Qualified property--A term that has the meaning assigned in the Texas Tax Code, §313.021(2).
  - (4) Tax credit--A credit that is made to a taxpayer who has applied for and received a limitation on appraised value under the Texas Tax Code, Chapter 313, from the school district that approved the limitation in an amount equal to the amount of ad valorem taxes paid to that school district that were imposed on the portion of the appraised value of the qualified property that exceeds the amount of the limitation agreed to by the governing body of the school district under the Texas Tax Code, §313.027(a)(2), in each year in the applicable qualifying time period.
  - (5) Tax year--The calendar year beginning January 1 in which the taxpayer incurred ad valorem taxes on the qualified property for which the taxpayer is entitled to a tax credit toward ad valorem taxes paid in that tax year.
  - (6) Texas Economic Development Act--The Texas Tax Code, Chapter 313.
- (c) Eligibility for additional state aid.
- (1) A school district may be eligible for additional state aid under the TEC, §48.254, only pursuant to the provisions of the TEC, §48.254, and the Texas Tax Code, Chapter 313.
  - (2) A school district must file an application on a form prescribed by the commissioner in accordance with the applicable timeline as described in subsection (i) of this section. A separate application must be made for each tax year for which additional state aid is being requested. An application, including the required supporting documentation described in subsections (d)(2) and (d)(3) of this section, as applicable, must be complete in order for the Texas Education Agency (TEA) to process it.
  - (3) A school district must be in compliance with the reporting requirements set forth in 34 Texas Administrative Code Chapter 9, Subchapter F (relating to Limitation on Appraised Value on Certain Qualified Property), to be eligible for additional state aid under the TEC, §48.254.
- (d) Procedures for filing request for additional state aid for ad valorem tax credits.
- (1) Method of filing. All requests for additional state aid under the TEC, §48.254, must be filed electronically with the TEA in accordance with instructions on the application.
  - (2) Information required for first year of tax credit. A school district's initial request for additional state aid under the TEC, §48.254, must include:
    - (A) a completed Request for Additional State Aid for Ad Valorem Tax Credit application form, including the template that comprises a component of the application showing requested and projected additional state aid for each agreement under the Texas Tax Code, Chapter 313;
    - (B) a copy of the taxpayer's application to the school district for the tax credit, together with all required attachments to the application;
    - (C) a copy of the school board's resolution or other proof that the school district has approved the taxpayer's application for the tax credit;
    - (D) a copy of the tax bill sent to the taxpayer (showing the taxes imposed are net of the tax credit); and
    - (E) confirmation that, as of the date of the tax credit approval, the taxpayer has not relocated its business outside of the school district.

- (3) Information required for subsequent years of tax credit. For each year subsequent to the year in which the initial request for the tax credit was approved, the request for additional state aid under the TEC, §48.254, must include:
  - (A) a completed Request for Additional State Aid for Ad Valorem Tax Credit application form, including the template that comprises a component of the application showing requested and projected additional state aid for each agreement under the Texas Tax Code, Chapter 313;
  - (B) a copy of the tax bill sent to the taxpayer (showing the taxes imposed are net of the tax credit); and
  - (C) confirmation that, as of the date of the tax credit approval, the taxpayer has not relocated its business outside of the school district.
- (e) Forms. The division of the TEA responsible for state funding will make available the application form, including the template, required under subsections (d)(2) and (d)(3) of this section.
- (f) Limitation of tax credit. In the fourth through the tenth years in which the agreement described in subsection (b)(2) of this section is in effect, the tax credit is limited to 50% of the total maintenance and operations and interest and sinking fund taxes imposed on the qualified property for the tax year for which the credit applies.
- (g) Determination of additional state aid. For any tax year for which additional state aid authorized by the TEC, §48.254, is approved, additional state aid will be limited to the amount of the tax credit due to the taxpayer for a qualified property that is receiving a limitation on appraised value for that year as determined in the Texas Tax Code, §313.104, as that section existed prior to the repeal of the Texas Tax Code, Chapter 313, Subchapter D, by HB 3390, 83rd Texas Legislature, Regular Session, 2013.
- (h) Erroneous tax credits and recovery of state aid for erroneous tax credits. If the comptroller of public accounts or the governing body of the school district determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the school district must provide a notification of the facts to the commissioner within 30 days of the official action. If the TEA determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the commissioner will notify the school district within 30 days of the determination. Any overpayment of additional state aid provided to the school district based on issuance of an erroneous tax credit by the school district will be fully recovered by the TEA pursuant to the TEC, §48.272.
- (i) Timeline for submission of application requests. The school district must submit its application for additional state aid for ad valorem tax credits on or before May 31 each year for which the tax credit is due.
- (j) Payment to the school district. On approval of a school district's application for additional state aid for ad valorem tax credits by the commissioner, the amount of the credit will be applied to the entitlement due to the school district (as soon as practicable after the application is approved).