

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**

6
7 **ON SEPTEMBER 24, 2019, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **October 11, 2019**
11 Estimated End of Comment Period: **November 11, 2019**

12
13 The Texas Workforce Commission (TWC) proposes the following new section to Chapter 815,
14 relating to Unemployment Insurance:

15
16 Subchapter C. Tax Provisions, §815.117

- 17
- 18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 19 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 20 **PART III. IMPACT STATEMENTS**
- 21 **PART IV. COORDINATION ACTIVITIES**

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24 The purpose of amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement
25 the requirements of Senate Bill (SB) 2296, passed by the 86th Texas Legislature, Regular Session
26 (2019), by providing clear guidelines for employers and the Agency regarding the circumstances
27 in which an employer may designate a Common Paymaster for state unemployment tax reporting
28 purposes.

29
30 On June 10, 2019, the Governor signed SB 2296 which amends §201.011(11) of the Texas
31 Unemployment Compensation Act (TUCA). Effective January 1, 2020, the definition of
32 “employing unit” includes a Common Paymaster as defined in 26 U.S.C. §3306(p) of the
33 Federal Unemployment Tax Act (FUTA). Under this section “if two or more related corporations
34 concurrently employ the same individual and compensate such individual through a Common
35 Paymaster which is one of such corporations, each such corporation shall be considered to have
36 paid as remuneration to such individual only the amounts actually disbursed by it to such
37 individual and shall not be considered to have paid as remuneration to such individual amounts
38 actually disbursed to such individual by another of such corporations.” Under §201.011(11)(B),
39 related corporations utilizing a Common Paymaster must still adhere to the requirements of
40 TUCA Chapter 204, Subchapter E.

41
42 Currently, the Texas Workforce Commission’s (Agency) Tax Department requires every
43 employing unit to individually report wages for each of its employees. However, once SB 2296
44 becomes effective, certain related corporations will have the ability to designate one of those
45 corporations as a Common Paymaster with respect to the employees that work concurrently for
46 the related corporations.

1
2 Once approved by the Agency, the Common Paymaster will have the option to report the
3 combined wages of any employee working for the Common Paymaster concurrently employed
4 with one or more related corporations.
5

6 SB 2296 requires the Commission to adopt rules necessary to implement this new TUCA
7 provision. The Commission recognizes that in order to properly implement SB 2296, the
8 Commission will need to define certain terms and set parameters for eligible related corporations
9 which have established an allowable Common Paymaster arrangement. These rules will need to
10 address definitions for Common Paymaster, what constitute related corporations, and concurrent
11 employment. Also required will be application procedures, TWC method of allocating taxes,
12 useful examples, and how this new tax arrangement will affect claims for unemployment
13 benefits.
14

15 A primary aim of these rules will be to reduce confusion concerning what constitutes an
16 allowable Common Paymaster structure. For example, under a Common Paymaster arrangement,
17 an employee must actually perform services concurrently for the Common Paymaster and each
18 of the related corporations employing the individual for the Common Paymaster to take
19 advantage of this wage reporting method.
20

21 This means that a Common Paymaster structure is in no way similar to a Professional Employer
22 Organization relationship because there is no co-employment relationship and since an
23 individual must actually perform services for the Common Paymaster. Similarly, because an
24 individual must perform services for the Common Paymaster, for a group of related corporations
25 to utilize this arrangement, the Common Paymaster cannot be a purely administrative entity
26 without employees. Payrolling is still not allowable under a Common Paymaster arrangement.
27

28 An additional purpose of these rules is to closely align with FUTA, and its corresponding
29 regulations, so that employers utilizing a Common Paymaster at the federal level can easily
30 match the same standards at the state level. It should be noted that for administrative purposes
31 under these proposed rules, a group of related corporations meeting all requirements may only
32 designate a single Common Paymaster.
33

34 These rule amendments are proposed pursuant to §201.011(11)(A), whereby the Legislature has
35 required TWC's three-member Commission (Commission) to exercise rulemaking authority to
36 administer the provisions of §201.011(11).
37

38 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

39 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
40 therefore, are not discussed in the Explanation of Individual Provisions.)
41

42 **SUBCHAPTER C. TAX PROVISIONS**

43 **TWC proposes the following amendment to Subchapter C:**
44

1 **§815.117. Employing Units: Common Paymaster**

2 New Section 815.117 establishes parameters to be used by the Agency’s Tax Department for
3 instances in which related corporations that concurrently employ the same workers delegate one
4 of their constituent corporations to serve as a Common Paymaster for employment tax reporting
5 purposes.
6

7 New subsection (a) limits the scope of this new rule to implementation of the Common
8 Paymaster provisions related to the definition of “employing unit” (§201.011(11)), with respect
9 to proper administration of the TUCA as required by SB 2296, 86th Texas Legislature, Regular
10 Session.
11

12 New subsection (b) stipulates the definitions which will apply under §201.011(11). Those are:
13

14 **Common Paymaster** -- A Common Paymaster of a group of two or more related corporations is
15 the designated entity which disburses remuneration to concurrently employed individuals of the
16 related corporations and is responsible for keeping books and records for the payroll with respect
17 to those individuals. The following are also incorporated into this definition:
18

19 -- The Common Paymaster is not required to disburse remuneration to all the employees of those
20 two or more related corporations. However, this rule does not apply to any remuneration paid to
21 an employee that is not paid through the Common Paymaster;
22

23 -- A group of related corporations may only have one Common Paymaster for the group. A
24 group of related corporations may not be subdivided to facilitate multiple Common Paymasters;
25 and
26

27 -- When two or more related corporations concurrently employ the same individual and
28 compensate that individual through a Common Paymaster, the Common Paymaster being one of
29 the related corporations for which the individual performs services, each of the corporations is
30 considered to have paid only the remuneration it actually disburses to that individual, unless the
31 disbursing corporation fails to remit the taxes due.
32

33 **Related Corporations** -- Two or more corporations are considered related corporations for an
34 entire calendar quarter if any of the following tests are satisfied at any time during that calendar
35 quarter:
36

37 -- *Parent-subsidiary controlled group.* The common parent corporation owns stock possessing
38 more than 50 percent of the total combined voting power of all classes of stock entitled to vote or
39 more than 50 percent of the total value of shares of all classes of stock of at least one of its
40 subsidiaries, AND one or more of the corporations, common parent included, owns stock
41 possessing more than 50 percent of the total combined voting power of all classes of stock
42 entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each
43 of the subsidiaries;
44

45 -- *Brother-sister controlled group.* Five or fewer persons who are individuals, estates, or trusts
46 own more than 50 percent of the total combined voting power of all classes of stock entitled to

1 vote or more than 50 percent of the total value of all classes of stock of each corporation, taking
2 into account the stock ownership of each person only to the extent such stock ownership is
3 identical with respect to each such corporation;

4
5 -- *Combined group*. A group of three or more corporations if each corporation is a member of
6 either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of
7 corporations; *and* at least one of those corporations is the common parent of a parent-subsidiary
8 controlled group and also is a member of a brother-sister controlled group;

9
10 -- With respect to stock, when a corporation that does not issue stock is involved, corporations
11 are related if either 50 percent or more of the members of one corporation's board of directors (or
12 other governing body) are members of the other corporation's board of directors (or other
13 governing body); *or* the holders of 50 percent or more of the voting power to select members of
14 one corporation's board of directors (or other governing body) are concurrently the holders of
15 more than 50 percent of that power with respect to the other corporation.

16
17 -- With respect to concurrent officers and employees, corporations are related if 50 percent or
18 more of one corporation's officers are concurrently officers of the other corporation; *or* 30
19 percent or more of one corporation's employees are concurrently employees of the other
20 corporation.

21
22 **Concurrent Employment** -- The *simultaneous* existence of an employment relationship
23 between an individual and two or more corporations. Concurrent employment involves the
24 performance of services by the individual for the benefit of the employing corporation, not
25 merely for the benefit of the group of corporations, in exchange for remuneration. The following
26 are also incorporated into this definition:

27
28 -- The simultaneous existence of an employment relationship with each corporation is a decisive
29 factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily
30 inactive is immaterial.

31
32 -- Employment is not concurrent with respect to one of the related corporations if the employee's
33 employment relationship with that corporation is completely nonexistent during the periods
34 when the employee is not performing services for that corporation;

35
36 -- An individual who does not perform substantial services for a corporation is presumed not
37 employed by that corporation; and

38
39 -- A corporation which has no employees performing services for it in Texas cannot be the
40 Common Paymaster for Texas employees of its related corporations.

41
42 New subsection (c) provides for procedures for submission of and approval by the Agency of a
43 Common Paymaster application.

44
45 -- Related corporations which compensate their employees through a Common Paymaster must
46 file with the Agency the details of their plan on a form prescribed by the Agency. The details

1 must include the names of the related corporations, the name of the Common Paymaster
2 corporation and the concurrently employed individuals involved. The filing shall include
3 documentation to substantiate the corporations are related as defined in the rule and that
4 employees are concurrently employed. An amendment to the plan must be filed whenever there
5 is a change in the related corporations participating in the plan, a change in the Common
6 Paymaster or a change in the concurrently employed individuals involved.

7
8 -- Plans and plan amendments submitted under the rule must be filed within the 30-day period
9 following the end of the calendar quarter in which the plan is in effect. Eligibility of an
10 employee to be compensated through a Common Paymaster shall be determined on a quarterly
11 basis.

12
13 New subsection (d) stipulates how employment taxes required under the TUCA are to be
14 allocated.

15
16 -- A Common Paymaster making disbursements on behalf of related corporations to concurrently
17 employed individuals is responsible for taxes, interest and penalties on all wages disbursed by it.

18
19 -- If the Common Paymaster fails to remit taxes, interest and penalties on all wages disbursed by
20 it as required, the Agency may hold each of the related corporations liable for a proportionate
21 share of the obligation. "Proportionate share" may be based on sales, property, corporate payroll
22 or any other reasonable basis that reflects the distribution of services of the pertinent employees
23 between the related corporations. If there is no reasonable basis for allocating the amount owed,
24 it shall be divided equally among the related corporations. If a related corporation fails to pay
25 any amount allocated to it pursuant to this section, the Agency may hold any or all of the other
26 related corporations liable for the full amount of the unpaid taxes, interest and penalties.

27
28 -- A Common Paymaster is not a successor corporation pursuant to TUCA Chapter 204,
29 Subchapter E, for concurrent employees unless the related corporation ceases operations and is
30 acquired in its entirety by the corporation serving as the Common Paymaster.

31
32 -- Wages paid by separate employing units may not be aggregated or combined for purposes of
33 reporting, except as provided in this rule, unless there is an actual transfer of entity and
34 experience rating as provided by TUCA Chapter 204, Subchapter E.

35
36 New subsection (e) describes benefit charging and notice procedures with respect to Common
37 Paymaster arrangements.

38
39 -- For purposes of charging benefits paid and mailing notices to base year employers, the
40 Common Paymaster shall be considered the employer for all wages disbursed to individuals by it

1 whether payment was for services performed for the common paymaster or for a related
2 corporation.

3
4 -- An employer seeking to establish a Common Paymaster arrangement must designate a mailing
5 address for benefit claim notices with the Agency per §208.003 of the TUCA.

6
7 Finally, new subsection (f) provides examples for the public to clarify the definitions of
8 “Common Paymaster,” “Related Corporations,” and “Concurrent Employment.”

9
10 **Common Paymaster:**

11
12 -- S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these
13 employees are concurrently employed and perform services for S and at least one other of the
14 related corporations, during a calendar quarter. The four corporations arrange for S to disburse
15 remuneration to thirty of these forty employees for their services. Under these facts, S is the
16 common paymaster of S, T, U, and V with respect to the thirty employees. S is not a common
17 paymaster with respect to the remaining employees.

18
19 **Related Corporations:**

20
21 *Parent-subsidiary controlled group.*

22
23 -- P Corporation owns stock possessing 51 percent of the total combined voting power of all
24 classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary
25 controlled group consisting of member corporations P and S.

26
27 -- Assume the same facts as in subsection (i). Assume further that S owns stock possessing 51
28 percent of the total value of shares of all classes of stock of X Corporation. P is the common
29 parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X.
30 The result would be the same if P, rather than S, owned the X stock.

31
32 -- P Corporation owns 51 percent of the only class of stock of S Corporation and S, in turn, owns
33 30 percent of the only class of stock of X Corporation. P also owns 51 percent of the only class
34 of stock of Y Corporation and Y, in turn, owns 30 percent of the only class of stock of X. P is the
35 common parent of a parent-subsidiary controlled group consisting of member corporations P, S,
36 X, and Y.

37
38 *Brother-sister controlled group.*

39
40 -- The outstanding stock of corporations X and Y, which have only one class of stock
41 outstanding, is owned by the following unrelated individuals: A owns 40% of X and 20% of Y;
42 B owns 10% of X and 30% of Y; C owns 30% of X and 40% of Y; D owns 20% of X; and E
43 owns 10% of Y. The result is that Corporations X and Y have 3 common owners - A, B, and C.
44 D and E are disregarded from the brother-sister test because they don't have ownership in both
45 companies. A, B, and C have the following Identical Ownership (the lesser of X or Y): A has

1 20% ; B has 10% ; and C has 30% . A, B, and C meet the identical ownership test because their
2 identical ownership is more than 50 percent of X and Y.

3
4 *Combined group.*

5
6 -- A, an individual, owns stock possessing 100 percent of the total combined voting power of all
7 classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 51 percent of the
8 total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are
9 members of the same combined group since X, Y, and Z are each members of either a parent-
10 subsidiary or brother-sister controlled group of corporations AND Y is the common parent of a
11 parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member
12 of a brother-sister controlled group of corporations consisting of X and Y.

13
14 -- Assume the same facts as in subsection (i) and further assume that corporation X owns 51
15 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are
16 members of the same combined group.

17
18 **Concurrent Employment:**

19
20 -- M, N, and O are related corporations which use N as a common paymaster. Their respective
21 headquarters are located in three separate cities several hundred miles apart. A is an officer of M,
22 N, and O who performs substantial services for each corporation. A does not work a set length of
23 time at each corporate headquarters, and when A leaves one corporate headquarters, it is not
24 known when A will return, although it is expected that A will return. Under these facts, A is
25 concurrently employed by the three corporations.

26
27 **PART III. IMPACT STATEMENTS**

28 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
29 years the rules will be in effect, the following statements will apply:

30
31 There are no additional estimated costs to the state and to local governments expected as a result
32 of enforcing or administering the rules.

33
34 There are no estimated cost reductions to the state and to local governments as a result of
35 enforcing or administering the rules.

36
37 There are no estimated losses or increases in revenue to the state or to local governments as a
38 result of enforcing or administering the rules.

39
40 There are no foreseeable implications relating to costs or revenue of the state or local
41 governments as a result of enforcing or administering the rules.

42
43 There are no anticipated economic costs to individuals required to comply with the rules.

44
45 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
46 communities as a result of enforcing or administering the rules.

1
2 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
3 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
4 Legislature, Regular Session, 2017 (to be codified at Texas Government Code §2001.0045), does
5 not apply to this rulemaking.
6

7 Takings Impact Assessment

8 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
9 affects private real property, in whole or in part or temporarily or permanently, in a manner that
10 requires the governmental entity to compensate the private real property owner as provided by
11 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
12 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
13 would otherwise exist in the absence of the governmental action, and is the producing cause of a
14 reduction of at least 25 percent in the market value of the affected private real property,
15 determined by comparing the market value of the property as if the governmental action is not in
16 effect and the market value of the property determined as if the governmental action is in
17 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
18 action under Texas Government Code, §2007.043. The primary purpose of this proposed
19 rulemaking action, as discussed elsewhere in this preamble, is to comply with legislative
20 direction pursuant to SB 2296, 86th Texas Legislature, Regular Session.
21

22 The proposed rulemaking action will not create any additional burden on private real property.
23 The proposed rulemaking action will not affect private real property in a manner that would
24 require compensation to private real property owners under the United States Constitution or the
25 Texas Constitution. The proposal also will not affect private real property in a manner that
26 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
27 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
28 Government Code, Chapter 2007.
29

30 Government Growth Impact Statement

31 TWC has determined that during the first five years the proposed amendments will be in effect:
32 --the proposed amendments will not create or eliminate a government program;
33 --implementation of the proposed amendments will not require the creation or elimination of
34 employee positions;
35 --implementation of the proposed amendments will not require an increase or decrease in future
36 legislative appropriations to TWC;
37 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
38 --the proposed amendments will not create a new regulation;
39 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
40 --the proposed amendments will not change the number of individuals subject to the rules; and
41 --the proposed amendments will not positively or adversely affect the state's economy.
42

43 Economic Impact Statement and Regulatory Flexibility Analysis

44 TWC has determined that the proposed rule will not have an adverse economic impact on small
45 businesses or rural communities, as these proposed rules place no requirements on small
46 businesses or rural communities.

1
2 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
3 significant negative impact upon employment conditions in the state as a result of the rules.

4
5 Clay Cole, Interim Director, Unemployment Insurance Division, has determined that for each
6 year of the first five years the rules are in effect, the public benefit anticipated as a result of
7 enforcing the proposed rules will be to provide consistency to certain related corporations which
8 use a Common Paymaster for federal tax reporting with respect to how they report wages under
9 the TUCA.

10
11 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
12 within TWC's legal authority to adopt.

13
14 **PART IV. COORDINATION ACTIVITIES**

15 During the rulemaking process, TWC considered all information gathered in order to develop
16 rules that provide clear and concise direction to all parties involved.

17
18 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
19 Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
20 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
21 Comments must be received or postmarked no later than 30 days from the date this proposal is
22 published in the *Texas Register*.

23
24 The rules are proposed under Texas Labor Code §201.011(11) and §301.0015 which provide the
25 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
26 effective administration of unemployment insurance services and activities.

27
28 The proposed rules affect Texas Labor Code, Title 4, Subtitle A, Texas Unemployment
29 Compensation Act.

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **SUBCHAPTER C. TAX PROVISIONS**

4
5 **§815.117. Employing Units: Common Paymaster.**

6
7 (a) Scope. This section shall govern the Texas Workforce Commission in its
8 administration of the Common Paymaster provisions authorized under §201.011(11)
9 of the Act.

10
11 (b) Definitions. The following definitions shall apply to §201.011(11) of the Act:

12
13 (1) Common Paymaster -- A Common Paymaster of a group of related
14 corporations is any member thereof that disburses remuneration to employees
15 of two or more of those corporations on their behalf and that is responsible for
16 keeping books and records for the payroll with respect to those employees. The
17 following are also incorporated into this definition:

18
19 (A) The Common Paymaster is not required to disburse remuneration to all
20 the employees of those two or more related corporations, but the
21 provisions of this section do not apply to any remuneration to an
22 employee that is not disbursed through a Common Paymaster;

23
24 (B) A group of related corporations may only have one Common Paymaster
25 for the group. A group of related corporations may not be subdivided to
26 facilitate multiple Common Paymasters; and

27
28 (C) When two or more related corporations concurrently employ the same
29 individual and compensate that individual through a Common Paymaster,
30 which is one of the related corporations for which the individual performs
31 services, each of the corporations is considered to have paid only the
32 remuneration it actually disburses to that individual, unless the disbursing
33 corporation fails to remit the taxes due.

34
35 (2) Related Corporations -- Two or more corporations shall be considered related
36 corporations for an entire calendar quarter if they satisfy any of the following
37 tests at any time during that calendar quarter:

38
39 (A) Parent-subsidiary controlled group. The common parent corporation
40 owns stock possessing more than 50 percent of the total combined voting
41 power of all classes of stock entitled to vote or more than 50 percent of
42 the total value of shares of all classes of stock of at least one of its
43 subsidiaries, AND one or more of the corporations, common parent
44 included, owns stock possessing more than 50 percent of the total
45 combined voting power of all classes of stock entitled to vote or more

1 than 50 percent of the total value of shares of all classes of stock of each
2 of the subsidiaries;

3
4 (B) Brother-sister controlled group. Five or fewer persons who are
5 individuals, estates, or trusts own more than 50 percent of the total
6 combined voting power of all classes of stock entitled to vote or more
7 than 50 percent of the total value of all classes of stock of each
8 corporation, taking into account the stock ownership of each person only
9 to the extent such stock ownership is identical with respect to each such
10 corporation;

11
12 (C) Combined group. A group of three or more corporations if:

13
14 (i) Each such corporation is a member of either a parent-subsiary
15 controlled group of corporations or a brother-sister controlled group
16 of corporations; and

17
18 (ii) At least one of such corporations is the common parent of a parent-
19 subsidiary controlled group and also is a member of a brother-sister
20 controlled group;

21
22 (D) When a corporation that does not issue stock is involved, either:

23
24 (i) 50 percent or more of the members of one corporation's board of
25 directors (or other governing body) are members of the other
26 corporation's board of directors (or other governing body); or

27
28 (ii) The holders of 50 percent or more of the voting power to select
29 members of one corporation's board of directors (or other governing
30 body) are concurrently the holders of more than 50 percent of that
31 power with respect to the other corporation;

32
33 (E) 50 percent or more of one corporation's officers are concurrently officers
34 of the other corporation; or

35
36 (F) 30 percent or more of one corporation's employees are concurrently
37 employees of the other corporation.

38
39 (3) Concurrent Employment -- means the simultaneous existence of an
40 employment relationship between an individual and two or more corporations.
41 Such a relationship contemplates the performance of services by the individual
42 for the benefit of the employing corporation, not merely for the benefit of the

1 group of corporations, in exchange for remuneration. The following are also
2 incorporated into this definition:

3
4 (A) The simultaneous existence of an employment relationship with each
5 corporation is a decisive factor. If it exists, the fact that a particular
6 employee is on leave or otherwise temporarily inactive is immaterial;
7

8 (B) Employment is not concurrent with respect to one of the related
9 corporations if the employee's employment relationship with that
10 corporation is completely nonexistent during the periods when the
11 employee is not performing services for that corporation;
12

13 (C) An individual who does not perform substantial services for a corporation
14 is presumed not employed by that corporation; and
15

16 (D) A corporation which has no employees performing services for it in
17 Texas cannot be the Common Paymaster for Texas employees of its
18 related corporations.
19

20 (c) Submission and approval of Common Paymaster.
21

22 (1) Related corporations which compensate their employees through a Common
23 Paymaster shall file with the Agency the details of their plan on a form
24 prescribed by the Agency. The details shall include the names of the related
25 corporations, the name of the Common Paymaster corporation and the
26 concurrently employed individuals involved. The filing shall include
27 documentation to substantiate the corporations are related as defined in
28 subsection (b)(2) of this section and that employees are the concurrently
29 employed. An amendment to the plan shall be filed whenever there is a change
30 in the related corporations participating in the plan, a change in the Common
31 Paymaster or a change in the concurrently employed individuals involved.
32

33 (2) Plans and plan amendments submitted pursuant to this rule shall be filed within
34 the 30-day period following the end of the calendar quarter in which the plan is

1 in effect. Eligibility of an employee to be compensated through a Common
2 Paymaster shall be determined on a quarterly basis.

3
4 (d) Allocation of employment taxes.

5
6 (1) A Common Paymaster making disbursements on behalf of related corporations
7 to employed individuals shall be responsible for taxes, interest and penalties on
8 all wages disbursed by it.

9
10 (2) If the Common Paymaster fails to remit taxes, interest and penalties on all
11 wages disbursed by it as required:

12
13 (A) the Agency may hold each of the related corporations liable for a
14 proportionate share of the obligation. Such proportionate share may be
15 based on sales, property, corporate payroll or any other reasonable basis
16 that reflects the distribution of services of the pertinent employees
17 between the related corporations; or

18
19 (B) if there is no reasonable basis for allocating the amount owed, it shall be
20 divided equally among the related corporations. If a related corporation
21 fails to pay any amount allocated to it pursuant to this section, the
22 Agency may hold any or all of the other related corporations liable for the
23 full amount of the unpaid taxes, interest and penalties.

24
25 (3) A Common Paymaster is not a successor corporation pursuant to Texas Labor
26 Code Chapter 204, Subchapter E, for concurrent employees unless the related
27 corporation ceases operations and is acquired in its entirety by the paymaster
28 corporation.

29
30 (4) Wages paid by separate employing units may not be aggregated or combined
31 for purposes of reporting, except as provided in this rule, unless there is an
32 actual transfer of entity and experience rating as provided by Texas Labor
33 Code Chapter 204, Subchapter E.

34
35 (e) Benefits.

36
37 (1) For purposes of charging benefits paid and mailing notices to base year
38 employers, the Common Paymaster shall be considered the employer for all
39 wages disbursed to individuals by the Common Paymaster whether payment

1 was for services performed for the Common Paymaster or for a related
2 corporation.

3
4 (2) An employer seeking to establish a Common Paymaster arrangement shall
5 designate a mailing address for benefit claim notices with the Agency per
6 §208.003 of the Act.

7
8 (f) Examples.

9
10 (1) Common Paymaster. S, T, U, and V are related corporations with 2,000
11 employees collectively. Forty of these employees are concurrently employed
12 and perform services for S and at least one other of the related corporations,
13 during a calendar quarter. The four corporations arrange for S to disburse
14 remuneration to thirty of these forty employees for their services. Under these
15 facts, S is the Common Paymaster of S, T, U, and V with respect to the thirty
16 employees. S is not a Common Paymaster with respect to the remaining
17 employees.

18
19 (2) Related Corporations:

20
21 (A) Parent-subsidiary controlled group.

22
23 (i) P Corporation owns stock possessing 51 percent of the total
24 combined voting power of all classes of stock entitled to vote of S
25 Corporation. P is the common parent of a parent-subsidiary
26 controlled group consisting of member corporations P and S.

27
28 (ii) Assume the same facts as in clause (i) of this subparagraph. Assume
29 further that S owns stock possessing 51 percent of the total value of
30 shares of all classes of stock of X Corporation. P is the common
31 parent of a parent-subsidiary controlled group consisting of member
32 corporations P, S, and X. The result would be the same if P, rather
33 than S, owned the X stock.

34
35 (iii) P Corporation owns 51 percent of the only class of stock of S
36 Corporation and S, in turn, owns 30 percent of the only class of
37 stock of X Corporation. P also owns 51 percent of the only class of
38 stock of Y Corporation and Y, in turn, owns 30 percent of the only
39 class of stock of X. P is the common parent of a parent-subsidiary
40 controlled group consisting of member corporations P, S, X, and Y.

41
42 (B) Brother-sister controlled group. The outstanding stock of corporations X
43 and Y, which have only one class of stock outstanding, is owned by the
44 following unrelated individuals: A owns 40% of X and 20% of Y; B
45 owns 10% of X and 30% of Y; C owns 30% of X and 40% of Y; D owns
46 20% of X; and E owns 10% of Y. The result is that Corporations X and Y

1 have 3 common owners - A, B, and C. D and E are disregarded from the
2 brother-sister test because they don't have ownership in both companies.
3 A, B, and C have the following Identical Ownership (the lesser of X or
4 Y): A has 20%; B has 10%; and C has 30%. A, B, and C meet the
5 identical ownership test because their identical ownership is more than 50
6 percent of X and Y.

7
8 (C) Combined group.

9
10 (i) A, an individual, owns stock possessing 100 percent of the total
11 combined voting power of all classes of the stock of corporations X
12 and Y. Y, in turn, owns stock possessing 51 percent of the total
13 combined voting power of all classes of the stock of corporation Z.
14 X, Y, and Z are members of the same combined group since X, Y,
15 and Z are each members of either a parent-subsidiary or brother-
16 sister controlled group of corporations AND Y is the common
17 parent of a parent-subsidiary controlled group of corporations
18 consisting of Y and Z, and also is a member of a brother-sister
19 controlled group of corporations consisting of X and Y.

20
21 (ii) Assume the same facts as in clause (i) of this subparagraph and
22 further assume that corporation X owns 51 percent of the total value
23 of shares of all classes of stock of corporation S. X, Y, Z, and S are
24 members of the same combined group.

25
26 (3) Concurrent Employment. M, N, and O are related corporations which use N as
27 a Common Paymaster. Their respective headquarters are located in three
28 separate cities several hundred miles apart. A is an officer of M, N, and O who
29 performs substantial services for each corporation. A does not work a set
30 length of time at each corporate headquarters, and when A leaves one corporate
31 headquarters, it is not known when A will return, although it is expected that A
32 will return. Under these facts, A is concurrently employed by the three
33 corporations.