

The Texas Economic Development Sales Tax

{ A PRIMER FOR LOCAL OFFICIALS }

2013 Update

BACKGROUND

The economic development sales tax was first created in 1989 to give smaller Texas communities the financial resources to create top-flight economic development programs. Today, the tax is the undisputed workhorse of local economic development efforts, serving as the backbone of economic development programs in more than 500 communities across the state.

The 2013 legislative session was a challenging one for supporters of the economic development sales tax. The TEDC was on constant alert and testified at countless hearings. Although three bills strongly opposed by the TEDC did manage to pass, the TEDC successfully advocated against several bills that would have significantly eroded the main purpose of the economic development sales tax—that is to help create primary jobs and enhance the overall economic vitality of communities.

RECENT CHANGES TO THE ECONOMIC DEVELOPMENT SALES TAX

Only three economic development sales tax bills passed during the 2013 regular session. All three bills were filed by Rep. Joe Deshotel and apply only to the City of Port Arthur. The first bill **HB 1966** authorizes the Port Arthur EDC to spend sales tax dollars on certain infrastructure projects needed to develop or revitalize the city. Eligible expenditures include streets and roads, rail spurs, utilities (water, sewer, electric and gas), drainage, site improvements, telecommunications, data, or Internet improvements and facilities designed to remediate, mitigate, or control erosion. The bill has a sunset date of September 1, 2017. The two other bills that passed are **HB 1967** which authorizes Port Arthur to use economic development sales tax dollars on certain job-related life skills and job training programs for unemployed persons and **HB 2473** which authorizes Port Arthur to use economic development sales tax dollars to be spent on the development or construction of housing facilities on or adjacent to the campus of a public state college.

The TEDC successfully advocated against **HB 374 by Guillen** which would have authorized the use of economic development sales tax dollars to develop, operate or expand community libraries. Another bill that also failed to pass, **HB 1935 by Schaeffer**, would have authorized both Type A and Type B corporations to use the economic development sales tax to fund a wide range of general infrastructure projects (streets and roads, sewage facilities and water supply facilities for the general public) with voter approval. Two other bills that TEDC successfully advocated against were **HB 2181 by Stephenson** which would have widely expanded the type of job training expenditures that are eligible for funding with economic sales tax revenues, and **HB 2521 by Springer** which would have authorized Type B economic development corporations to use economic development sales tax dollars to support non-affordable housing projects.

KEY TERMINOLOGY

Economic Development Corporations (EDCs) are the legal entities with the statutory authority to spend economic development sales tax dollars. The corporations are city-chartered and governed by a city-appointed board of directors. Corporations are now referred to either as “Type A” or “Type B” depending on the type of economic development sales tax uses approved by local voters.

Chapters 501-505, Local Government Code is the section of Texas law that contains the rules governing the use of the economic development sales tax, including eligible uses of revenues and procedures that must be followed to enact the tax. The economic development sales tax statute was previously located in 5190.6 of Vernon’s Civil Statutes.

How does the “Type A” tax differ from the “Type B” tax?

This practitioners guide offers a quick snapshot of what you can do with economic development sales tax dollars. It is not intended as a substitute for your EDC’s legal counsel or the Office of the Attorney General Economic Development Handbook.

Type A Eligible Projects

- Land, buildings, equipment, facilities, improvements, and expenditures that are for the creation and retention of primary jobs and suitable for the development, retention, or expansion of the following types of projects: manufacturing, industrial, research & development, recycling, small warehouses, distribution centers, regional or national corporate headquarter facilities, closed or realigned military bases, and primary job training facilities by higher education institutions
- Job training classes and career centers (no primary job requirement)
- Business airport facilities and port-related facilities
- Clean-up of contaminated project sites (with a special election and specific ballot language)
- Infrastructure assistance to retail or commercial projects
- Business-related sewer utilities and site improvements
- Beach remediation in Gulf communities required or suitable to promote or develop new or expanded business enterprises
- Projects designed to attract new military missions, prevent the closure of existing missions, and redevelop a closed or realigned military base
- General airport facilities for communities located 25 miles from the US/Mexico border only
- Light rail, commuter rail, or motor buses
- Type B projects with voter approval
- As described on page 1, the City of Port Arthur is authorized to use the economic development sales tax on certain general infrastructure, job training and university housing projects

Type B Eligible Projects

- Everything authorized under Type A , including retail and commercial projects with the same restrictions
- Water supply facilities (with a special election and specific ballot language)
- Projects that improve a community’s quality of life, including parks, professional and amateur sport and athletic facilities, tourism and entertainment facilities, affordable housing, and other improvements or expenditures that promote new or expanded business activity that create or retain primary jobs
- Projects designed to attract new military missions, prevent the closure of existing missions, and redevelop a closed or realigned military base
- Sewer or solid waste disposal facilities in Hidalgo County
- Direct incentives for retail in communities with fewer than 20,000 residents and certain land-locked cities
- Hangers, airport maintenance and repair facilities, air cargo facilities, related infrastructure located on or adjacent to an airport facility
- Airport facilities provided that the eligible municipality enter into an approved development agreement with an entity that acquires a leasehold or other possessory interest from the economic development corporation
- Rail ports, rail switching facilities, marine ports, and inland ports

1979

Development Corporation Act passed, authorizing cities to create economic development corporations.

1989

4A tax authorized to provide funding source for recruiting and retaining manufacturing and industrial projects.

1991

4B tax authorized for broader community development projects.

1997

State reporting requirement enacted.
4A corporations authorized to undertake 4B projects with voter approval.

1999

Allowable 4A and 4B projects expanded to include targeted infrastructure, job creation, and retention, job training, and educational facilities.

PRIMARY JOBS

Pursuant to HB 2912, which passed in 2003, most Type A projects must create or retain primary jobs. Exceptions to this rule include business airports, port-related facilities, job training classes, career centers and certain infrastructure improvements that promote new or expanded business enterprises.

The economic development sales tax statute defines a primary job as a job that is: (1) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets, infusing new dollars into the local economy; and (2) included in one of the following sectors of the North American Industry Classification System (NAICS).

ELIGIBLE NAICS SECTORS

111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211 to 213	Mining
221	Utilities
311 to 330	Manufacturing
42	Wholesale Trade
48 and 49	Transportation and Warehousing
51	Information, excluding movie theaters (51213) and drive-in theaters (512132)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416 5417, and 5419	Scientific Research and Development Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions
928110	National Security

2001

R&D facilities added as eligible projects.

Training requirements established.

2003

Educational facilities, learning centers, and municipal buildings excluded as eligible projects.

HB 2912 passes, limiting the use of retail incentives.

2005

Restrictions on retail incentives removed for certain Texas communities.

Certain sewer utilities, site improvements, and military related projects added as eligible projects.

Call centers added to definition of primary jobs.

2007

Light rail, commuter rail, or motor buses added to eligible projects.

Hangers, airport maintenance and repair facilities, air cargo facilities, related infrastructure located on or adjacent to an airport added to eligible 4B projects.

2009

Economic development sales tax statute re-codified into Local Government Code, effective April 1, 2009.

Rail ports, rail switching facilities, marine ports, inland ports and rail port facilities added to definition of "project."

THE ECONOMIC DEVELOPMENT SALES TAX: WORKING FOR TEXAS

The economic development sales tax is the state's largest and most effective local revenue source for economic development. The best way to protect the tax for years to come is to use it with caution, care, and common sense.

The Texas Economic Development Council (TEDC) will continue to advocate, educate, and inform economic development professionals, local officials, and lawmakers on developments related to the tax, including best practices and recommended statutory changes. In addition, the TEDC will continue to offer state-mandated training for local economic development officials, which provides the tools and knowledge needed to develop and implement effective economic development programs.

FOR MORE INFORMATION ABOUT THE ECONOMIC DEVELOPMENT SALES TAX

The Office of the Attorney General recently released an updated version of its publication "Economic Development Handbook 2013." This comprehensive document provides a legal and technical overview of Texas state and local economic development programs, including an extensive section on the economic development sales tax. The document can be downloaded from:

https://www.oag.state.tx.us/AG_Publications/pdfs/econdevhb2013.pdf

Texas Ahead, a web site compiled by the Comptroller of Public Accounts contains extensive information on the economic development sales tax, including video tutorials, a guidebook, maps of EDCs, links to relevant statutes and a link to the online mandatory annual expenditure reporting form. Please visit www.texasahead.org/tax_programs/typeab.

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