

ECONOMIC DEVELOPMENT SALES TAX



Glenn Hegar

Texas Comptroller of
Public Accounts

WHY LEVY A TYPE A OR B ECONOMIC DEVELOPMENT SALES TAX?

Voters in most Texas cities have the option of imposing a local sales and use tax to help finance their community's economic development efforts.

WHO IS ELIGIBLE?

TYPE A SALES TAX

Any city located in a county with a population of less than 500,000 may impose the tax under **Type A** if the new combined local sales tax rate would not exceed 2 percent.

Some cities located in counties with a population of 500,000 or more also may use **Type A** for economic development efforts but a city's eligibility varies from county to county. For information on which cities are eligible to impose the **Type A** tax in these counties, call the Comptroller's Data Analysis and Transparency Division at 1-800-531-5441, ext. 3-4679.

TYPE B SALES TAX

All cities are eligible to adopt the **Type B** sales tax if the combined local sales tax rate would not exceed 2 percent.

HOW IS THE TAX ADMINISTERED?

DEVELOPMENT CORPORATIONS

For both **Type A** and **Type B**, the Development Corporation Act requires cities to establish a corporation to administer the sales and use tax funds.

The corporation must file articles of incorporation with the Secretary of State. The articles of incorporation must state that the corporation is governed by the Development Corporation Act of 1979 found in Chapters 501-505 of the **Local Government Code**.



BOARD OF DIRECTORS

A **Type A** or **Type B** corporation's board of directors serves at the pleasure of the city council and may be removed and replaced at any time and without cause. All expenditures authorized by a **Type A** or a **Type B** corporation also require approval by the city council.

Board meetings of **Type A** and **Type B** corporations must be held within the corporate limits of the authorizing municipality; unless the authorizing city is located in a county with a population of 30,000 or fewer where meetings may be held at any location within the county.

The following rules apply to terms and number of directors for each type of corporation:

- **Type A:** The city council must appoint a board of directors with at least five members to serve terms not to exceed six years. The statute does not specify qualifications for board members.
- **Type B:** The city council must appoint a board of seven directors. Three of the seven directors

A **Type A** or **B** sales tax can be levied in increments of 0.125% if the total rate does not exceed the 2% cap for all local sales tax rates combined.

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www.TexasAhead.org

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econ.dev@cpa.texas.gov

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

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must not be employees or officers of the city or members of the city council. All directors are appointed to two-year terms. The directors must be residents of the city authorizing the sales tax if the city's population is 20,000 or more. For cities with fewer than 20,000 residents, directors must be residents of the county in which the majority of the city is located, or reside within 10 miles of the city and in a county that borders the county in which a majority of the city is located.

ADMINISTRATION EXPENSES

Type A and **Type B** corporations are authorized to pay administrative expenses (including staff) to implement the corporation's projects. These may include administrative expenses for acquisition, construction, improvement, expansion and financing of projects. Cities that perform some of the administrative functions for the corporations may seek reimbursement for administrative expenses related to projects overseen by city staff. Additionally, corporations may contract with private corporations or other entities to carry out industrial development programs or objectives.

TRAINING

Certain officials of cities that create a corporation and administrators of the corporation are required to attend an economic development training seminar within 90 days of taking office. Attendance is mandatory (at least once in a 24-month period) for the city attorney, the city administrator or the city clerk; and the executive director or other person who is responsible for the day-to-day administration of the corporation. Corporation funds may be used to pay the costs of attending the seminar.

The Comptroller's office may impose a penalty not to exceed \$1,000 for failure to attend the required training seminar.

OPEN MEETINGS AND PUBLIC HEARINGS

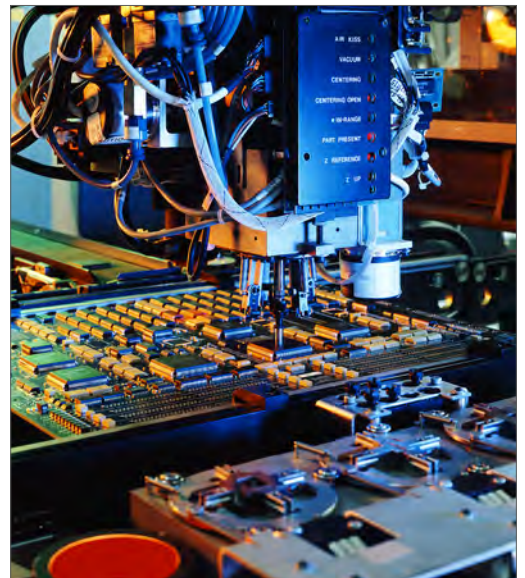
A development corporation's board of directors is subject to the Open Meetings Act (**Government**

Code, Chapter 551) and the Texas Public Information Act (**Government Code, Chap. 552**.)

- **Type A** corporations are required to hold public hearings only when considering an election asking the municipality's voters to authorize a **Type B** project.
- **Type B** corporations located in cities with populations not exceeding 20,000 residents are exempt from holding public hearings when implementing **Type A** projects such as those that fund infrastructure or primary jobs activities. All **Type B** corporations, regardless of city population, must hold public hearings on all other types of projects. In addition, all **Type B** corporations must wait 60 days from the first public notice of the nature of a project before providing funds. This interval allows voters time to consider a petition for an election to be called on whether to pursue the project.

HOW CAN TAX REVENUE BE USED?

Sales tax generated by both **Type A** and **Type B** is primarily intended to promote manufacturing and industrial development; **Type B** corporations may fund some quality of life projects, and efforts to retain primary jobs.



The **Type A** sales tax is primarily intended for manufacturing and industrial development.

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BOTH TYPE A AND TYPE B

Funds may be used to pay for land, buildings, equipment, facilities' expenditures, targeted infrastructure and improvements for purposes related to:

- manufacturing and industrial facilities, recycling facilities, distribution centers, and small warehouse facilities;
- research and development facilities, regional or national corporate headquarters facilities, primary job training facilities for use by institutions of higher education, job training classes, telephone call centers, and career centers that are not located within a junior college taxing district;
- a general aviation business service airport that is an integral part of an industrial park;
- certain infrastructure improvements that promote or develop new or expanded business enterprises;
- airport facilities;
- the operation of commuter rail, light rail or commuter buses;
- port-related facilities, rail-ports, rail switching facilities, marine ports, inland ports; and
- maintenance and operating costs associated with projects.

TYPE A SPECIAL CONDITIONS

Under special conditions, a **Type A** Corporation's revenue can be used for projects normally eligible only under **Type B** without voting to abolish the **Type A** tax and impose the **Type B** tax.

- In cities with 7,500 or fewer residents that have created both types of corporation, the city council may authorize the **Type A** corporation to fund **Type B** projects by simple majority vote.
- In larger communities or those with only **Type A** corporations, the board of directors must publish notice of a proposed **Type B** project, hold at least one public hearing and conduct a special election to seek voter approval. The ballot must clearly describe the project under consideration.
- **Type A** corporations also may spend sales tax funds to clean up contaminated property if the city holds a separate election to gain voter approval. A corporation created under **Type A** cannot assume debts, or pay principal or interest on debts that existed before the city created the corporation.

TYPE B ELIGIBLE PROJECTS

Quality of Life: In addition to the projects listed above, **Type B** corporations may fund quality of life improvements, and acquire or pay for land, buildings, equipment, facilities expenditures, targeted infrastructure and improvements required or suitable for use for:

- professional and amateur sports (including children's sports) and athletic facilities, tourism and entertainment facilities, convention facilities, public parks and event facilities (including stadiums, ballparks, auditoriums, amphitheaters, concert halls, parks and open space improvements, museums and exhibition halls); related store, restaurant, concession, parking and transportation facilities; related street, water and sewer facilities;
- water supply facilities and water conservation programs, and
- affordable housing.

Primary Job Retention: To promote and develop new and expanded business enterprises that create or retain primary jobs, a **Type B** corporation may provide funds for:

- public safety facilities;

The **Type B** sales tax provides cities with a wider range of uses for the tax revenues because it is intended to give communities an opportunity to undertake a project for quality of life improvements, including economic development that will attract and retain primary employers.

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All **Type A** and **Type B** corporations must file an annual report with the Texas Comptroller of Public Accounts by Feb. 1.

- recycling facilities;
- streets and roads;
- drainage and related improvements;
- demolition of existing structures;
- general municipally-owned improvements;
- maintenance and operating costs associated with projects; and
- improvements or facilities that the board determines will contribute to the promotion or development of new or expanded business enterprises that create or retain primary jobs.

Landlocked communities: A city classified as a “landlocked” community may create a **Type B** corporation to fund projects that promote new or expanded business development without requiring the project to create or retain primary jobs. A landlocked community is defined as a city that is wholly or partly located in either Harris County or Dallas County and has less than 100 acres within its city limits and extraterritorial jurisdiction that can be used to develop manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city.

Small municipalities: A **Type B** corporation created by a city with a population of 20,000 or less also may fund projects that do not create or retain primary jobs. If a project of this nature would require an expenditure of more than \$10,000, the governing body of the city creating the corporation would have to adopt a resolution authorizing the project after giving the resolution at least two separate readings.

Infrastructure Improvements: A **Type B** corporation may promote new or expanded business development by funding streets and roads, rail spurs, water, sewer, electric and gas utilities, drainage, site improvements, and telecommunications and Internet improvements. Beach remediation along the Gulf of Mexico may also be funded.

A **Type B** corporation may, with voter approval of the project, spend sales tax for a water supply or water conservation program or to clean up contaminated property.

SPECIAL PROVISIONS FOR BORDER COMMUNITIES

Development corporations created by cities located within 25 miles of the Texas-Mexico border may fund airport facilities if the city has a population of less than 50,000 or an average unemployment rate that is greater than the state average rate during the most recent 12-month period for which data is available preceding the date the project is approved. In addition to airports, **Type A** and **Type B** corporations located in Hidalgo County may fund ports, and sewer or solid waste disposal facilities required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises.

CAN YOU UNDERTAKE PROJECTS OUTSIDE CITY LIMITS?

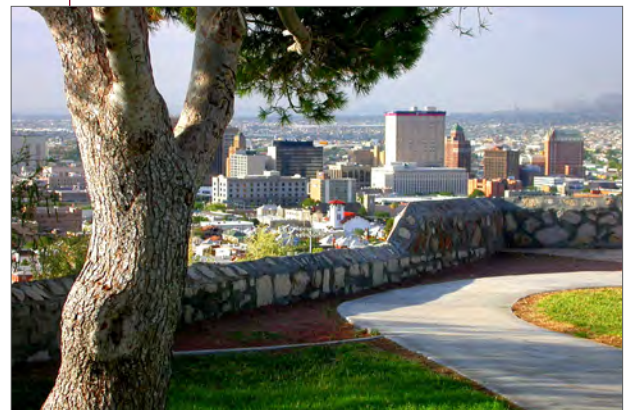
An economic development corporation may undertake projects outside city limits so long as it is clear that the city benefits from the project. If a corporation undertakes a project outside city limits, it must receive permission to do so from the governing body of the entity with jurisdiction in that area. For example, if a corporation locates a project beyond the city limits, it should seek approval from the county’s commissioners court.

REPORTING REQUIREMENTS OF TYPE A AND TYPE B CORPORATIONS

The Development Corporation Act requires that all **Type A** and **Type B** corporations file an annual report with the Texas Comptroller of Public

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Accounts by Feb. 1 of each year. The report must include the corporation's economic development objectives, revenues and expenditures for the preceding fiscal year, a breakdown of these expenditures and a list of the corporation's assets.

The Comptroller also may ask for any other information required to determine the use of revenue from sales and use tax imposed under **Type A** or **Type B** to encourage economic development in the state. The report form and instructions for submitting the report are available through the **Comptroller's website**. This information is compiled in the **Economic Development Corporation Report** to the Legislature each biennium.

HOW TO IMPOSE THE TAX AND CALL AN ELECTION?

City voters must approve this special, dedicated tax at an election held for that purpose. Cities may call for this election in one of two ways:

- the governing body may call an election on its own; or
- the city council must call for the election if petitioned by at least 20 percent of the number of voters who cast ballots in the most recent regular municipal election.

For guidance on the timing of elections, please contact the Secretary of State at 512-463-5650 or toll free at 1-800-252-8683. Additional information is available on the **Secretary of State website**.

The election must be held on one of the two uniform election dates:

- the first Saturday in May; or
- the first Tuesday after the first Monday in November.

HOW LONG IS THE TAX EFFECTIVE?

A development corporation's sales tax approved without a limit on its duration is effective until repealed by an election.

A tax imposed for a specified period expires at the end of that period; it may be extended or reimposed after its expiration date only with voter approval.

A tax for a specific project expires when all debts related to the project and obligations from the tax proceeds have been paid in full. A tax imposed for a specific project may also be reimposed by an election.

A **Type A** or **Type B** sales tax is effective until the city notifies the Comptroller's office to stop collecting the tax. A city must continue assessing the tax until all obligations incurred by the corporation, including principal and interest on bonds, are satisfied.

CAN THE TAX BE INCREASED OR DECREASED?

INITIATING AN ORDINANCE TO CHANGE THE TAX RATE

As with adoption, the sales and use tax rate must be increased or decreased in increments of 0.125 percent; the minimum **Type A** or **Type B** tax rate is 0.125 percent and may not result in a combined rate of all local sales and use taxes exceeding 2 percent.

If a city is already imposing an economic development sales tax, the city's governing body may adopt an ordinance calling for an election to increase, reduce or repeal the existing tax. The ordinance may be initiated by a majority vote of the governing body, or by a petition of registered voters.

PETITION REQUIREMENTS

A petition to initiate a change in the **Type A** tax requires 10 percent or more of the registered voters to request the city to call an election for that purpose.

The city's voters **must approve** an economic development tax before it can be enacted.

Economic development projects that clearly benefit a city may take place outside the city's limits.

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Sales taxes paid by consumers in one month, are remitted to the Texas Comptroller the next month by businesses, and paid to the city during the following month.



No specific procedures for requesting **Type B** tax rate changes are included in the statute; however, general provisions of the **Texas Tax Code** for calling an election may be used. Under these provisions, the city council must call an election if a number of qualified voters of the municipality equal to at least 20 percent of the number of votes cast in the most recent regular municipal election present a petition to the governing body for a vote. Dissolution of a **Type B** corporation can be called for by petition of 10 percent of the registered voters in the city.

If the election to adopt or change the tax rate is by petition, the governing body must determine if the petition is sufficient within 30 days of receiving it. If the petition is sufficient, the city must, within 60 days after receiving it, adopt the ordinance that calls for the election to be held on the next uniform election date.

COMBINED BALLOT PROPOSITION

If a city chooses to hold an election to reduce or abolish its **Type A** sales tax and adopt a sales tax under **Type B**, the city may address the two issues in a single ballot proposition.

A municipality may combine into one ballot for voters to concurrently consider a proposition that:

- lowers or repeals any dedicated or special purpose municipal sales tax, and
- raises or adopts any other dedicated special purpose municipal sales tax (such as a sales tax levied to reduce the property tax rate).

Only sales tax elections that may be called by the governing body of a city are eligible for combined ballot propositions. If a combined sales tax

proposition is defeated, there is no effect on any existing sales taxes already imposed.

WHEN DO TAX COLLECTIONS AND ALLOCATIONS START?

CERTIFYING ELECTION RESULTS

If voters approve the tax, the governing body must adopt a resolution or ordinance declaring the election results in meeting minutes.

The city secretary must send the certified copy of the resolution or ordinance with the election results to the Revenue Accounting, Tax Allocation Section of the Comptroller's office. The information sent to the Comptroller must include:

- the date the election was held;
- the proposition voted on;
- number of votes cast for adoption;
- number of votes cast against adoption;
- number of votes by which the proposition was approved; and
- a statement the proposition was adopted.

The Comptroller's office must receive this information from the city secretary through U.S. certified or registered mail. The Comptroller's office will notify the city secretary when it is ready to handle the administration of the tax. Questions may be emailed to taxalloc.revacct@cpa.texas.gov.

COMPTROLLER'S ADDRESS

Comptroller of Public Accounts
Revenue Accounting Division
Tax Allocation Section
P.O. Box 13528
Austin, TX 78711-3528

EFFECTIVE DATE

The tax becomes effective after one complete calendar quarter elapses from the date the Comptroller's office receives notification of voter approval. For example, if voters approve the tax in May, and the Comptroller's office receives notification in June, then the tax becomes effective on Oct. 1, after the calendar quarter of July-August-

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September has elapsed. The Comptroller's office will notify area merchants to begin collecting the new tax rate on Oct. 1, and the Comptroller will send the city its first revenue allocation in December.

METHOD OF PAYMENT

The Comptroller's office will issue a payment for the total city tax and a letter with the first payment (that includes the economic development sales tax) with instructions explaining how to calculate the portion due the city and the amount due the development corporation. After a city receives the sales and use tax revenues from the Comptroller's office, the city must deliver the revenue to the development corporation.

NEED MORE INFORMATION ABOUT ECONOMIC DEVELOPMENT SALES TAX?

The Comptroller's office can provide presentations on matters related to local sales tax, including **Type A** and **Type B** sales taxes. Representatives also can meet in forums with city officials and the public to help them assess possible effects of the tax on their local communities, including effects on revenue. For more information about the sales tax, or to request a speaker to present information about the sales tax to your community, call 1-800-531-5441, ext. 3-4679.

The Texas Municipal League publishes an **Economic Development Handbook** containing more detailed information and statutory citations.

The tax becomes effective after one complete calendar quarter elapses from the date the Comptroller's office receives notification of voter approval.

BALLOT LANGUAGE FOR AN ECONOMIC DEVELOPMENT SALES TAX

UNDER TYPE A

Following is ballot language specified for **Type A** corporations under the Development Corporation Act:

1. For a city to adopt, increase or reduce the tax, the ballot must state: *The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of _____.*
(Insert rate in increments of one-eighth of one percent as appropriate for the proposed tax rate.)
2. A city may also allow a vote on a ballot proposition limiting the length of time a sales and use tax may be imposed. The following language should be added to #1: *to be imposed for _____ years.*
3. A city may also indicate a specific project on the ballot to be funded with the sales tax revenue. In this case, a description of the project is substituted in #1 in place of the following ballot language: *new and expanded business enterprises.*
4. For a city to dissolve the **Type A** corporation, the ballot should state: *Dissolution of the (name of development corporation).*

UNDER TYPE B

Except for specific projects such as water supply facilities, water conservation programs and cleanup of contaminated property, the Development Corporation Act does not provide specific ballot language for **Type B**. City officials should consult with their legal counsel when drafting the ballot language under this section.

Disclaimer: This brochure should not be construed as, and is not a substitute for, legal advice. Cities are urged to consult their own legal counsel for any questions or interpretations about economic development laws.

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911 Emergency Service/
Equalization Surcharge
Automotive Oil Fee
Battery Fee
Boat and Boat Motor Sales Tax
Customs Broker
Fireworks Tax
Mixed Beverage Taxes
Off-Road, Heavy-Duty Diesel
Equipment Surcharge
Oyster Fee
Sales and Use Taxes

1-800-531-5441
Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

1-800-531-5441, ext. 3-3630
WebFile Help

1-800-252-1381
Bank Franchise
Franchise Tax

1-800-252-7875
Spanish

1-800-531-1441
Fax on Demand (Most frequently requested
Sales and Franchise tax forms)

1-800-252-1382
Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge,
Rental and Seller Financed Sales Tax
Motor Vehicle Registration Surcharge

1-800-252-1383
Fuels Tax
IFTA
LG Decals
Petroleum Products Delivery Fee
School Fund Benefit Fee

1-800-252-1384
Coastal Protection
Crude Oil Production Tax
Natural Gas Production Tax

1-800-252-1387
Insurance Tax

1-800-252-1385
Coin-Operated Machines Tax
Hotel Occupancy Tax

1-800-252-1386
Account Status
Officer and Director Information

1-800-862-2260
Cigarette and Tobacco

1-888-4-FILING (1-888-434-5464)
TELEFILE: To File by Phone

1-800-252-1389
GETPUB: To Order Forms and Publications

1-800-654-FIND (1-800-654-3463)
Treasury Find

1-800-321-2274
Unclaimed Property Claimants
Unclaimed Property Holders
Unclaimed Property Name Searches
512-463-3120 in Austin

1-877-44RATE4 (1-877-447-2834)
Interest Rate