



Type A Economic Development Sales Tax

MEDC

CITY OF MCKINNEY, TEXAS

NOVEMBER 17, 2020

Can the MEDC grant or gift Type A proceeds to a business entity without a performance agreement?

- ▶ **Must have a performance agreement. Performance agreement must contain the following:**
 - **schedule of additional payroll or jobs to be created or retained**
 - **schedule of capital investment to be made, and**
 - **specify the terms for any repayment.**
 - **Tex. Loc. Gov't Code § 501.158.**

WHO ADMINISTERS AND OVERSEES THE TYPE A SALES TAX?

- Type A sales tax are administered by non-profit corporations – the MEDC.
- The corporations through a board of directors determine which projects to fund.
- City council retains approval authority over all expenditures of the corporation. § 501.073(a) and 501.054(b)(2).

Does City Council have to Approve Expenditures for Type A Projects?

- ▶ The MEDC has the power to expend the sales tax revenue.
- ▶ Yet, City Council retains authority to “approve all programs and expenditures of a corporation.” § 501.073(a).
- ▶ City Council’s oversight includes the authority to approve promotional expenditures as well.
 - ▶ Op. Tex. Att’y Gen. No. GA-0086 (2003).

Does City Council Appoint the Directors of the MEDC?

- The MEDC board of directors consists of seven (7) directors.
- Type A board members must reside within the City of McKinney.
- Type A board members are appointed by City Council and can be removed with or without cause.

How Long a Term do Type A Board of Directors serve?

- ▶ State law provides that the term for a Type A board member cannot exceed six (6) years. § 504.051(c).
- ▶ Under the MEDC Bylaws, board members serve a term consistent with the City's Policy. Article IV, § 3(c).
- ▶ City's Board and Commission Policy provides for City residency, 2 year terms, with 3 consecutive, full-term, term limits.

Who determines which board members serve as chairman, vice-chairman, secretary and treasurer of the corporation?

The board of directors appoint the officers to serve as chairman, vice-chair, secretary, and treasurer.

- Tex. Loc. Gov't Code § 504.052.

How long is the term for officers of the MEDC?

- ▶ The MEDC bylaws provide for a one-year term of office ending September 30th. Bylaws, Article VI, § 10 a.
- ▶ If the certificate of formation or bylaws do not address the term of office, the officers are elected annually.
 - ▶ Tex. Loc. Gov't Code § 501.065(b).

What Constitutes a Quorum for the MEDC?

- ▶ A majority of the board constitutes a quorum.
- ▶ **Type A**: Four (4) members of the seven (7) member Type A board constitute a quorum.

Are the MEDC meetings subject to the Open Meetings Act?

- Yes. Type A corporations are subject to the Open Meetings Act. Sec. 501.072.

Is the MEDC subject to the Public Information Act?

- ▶ Yes. Type A corporations are subject to the Public Information Act. Section 501.072.

Can the MEDC amend its bylaws?

- ARE AUTHORIZED TO ADOPT AND AMEND BYLAWS NOT INCONSISTENT WITH:
 - CERTIFICATE OF FORMATION; OR
 - STATE LAW.
- AMENDMENTS TO THE BYLAWS MUST BE APPROVED BY RESOLUTION OF THE CITY COUNCIL.
 - Tex. Loc. Gov't Code § 501.064(c).

Economic Development Corporation Report

- Section 502.151 of the Texas Local Government Code provides the following:
- Requires all Type A & Type B's to submit an annual report to the State Comptroller's Office
- The report must be submitted by April 1st each year (formerly Feb. 1st) (S.B. 450 (2019)).
- \$200 penalty failure to file
- Comptroller must report to Legislature in even numbered years.

Economic Development Corporation Report

01-138 (Rev. 10-03/07) TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
ECONOMIC DEVELOPMENT CORPORATION REPORT
 —Fiscal Year Ending 2003

Corporation name			
Contact person		Title	
Street address			
City	State	ZIP code	
TEXAS			
Phone (Area code and number)	FAX (Area code and number)	E-mail address (if applicable)	Type of corporation <input type="checkbox"/> 4A <input type="checkbox"/> 4B

As required by Vernon's Ann. Civ. St. Art. 5190.6 §4C, please complete and return this form to the Comptroller's office by February 1, 2004. Your reply must be postmarked no later than February 1, 2004. Please use the enclosed self-addressed envelope. You may also complete and fax this form to 512/475-0864 no later than the due date. Failure to file a completed report form by February 1, 2004 may result in an administrative penalty. Instructions are on the back of this form.

1. Indicate your corporation's fiscal year _____
2. Check the corporation's primary economic development objective(s):

<input type="checkbox"/> Job Creation/Job Retention	<input type="checkbox"/> Infrastructure Projects
<input type="checkbox"/> Tourism	<input type="checkbox"/> Other (You may use a separate sheet to provide additional information, if desired.)
<input type="checkbox"/> Sports Facilities/Recreation	
3. List the corporation's total revenues during the preceding fiscal year.

Sales Tax Revenue	\$ _____
State/Federal Grants and Matching Contributions	_____
Rental/Lease/User Fees Income	_____
Bond Proceeds/Loans Obtained	_____
Other Revenue	_____
TOTAL FISCAL YEAR-END 2003 REVENUES	\$ _____
4. List the corporation's total expenditures during the preceding fiscal year in each of the following categories:

Personnel	\$ _____
Administration	_____
Marketing and Promotion	_____
Direct Business Incentives (Do not include payments to other taxing units)	_____
Job Training	_____
Debt Service	_____
Capital Costs	_____
Affordable Housing	_____
Payments to Taxing Units (e.g., school districts, municipalities, counties, etc.)	_____
Other	_____
TOTAL FISCAL YEAR-END 2003 EXPENDITURES	\$ _____
5. List the corporation's capital assets. (Exclude office equipment.)

_____	_____	_____
_____	_____	_____

PERSON COMPLETING THE FORM

Print name		Title
Signature		Phone (Area code and number)

If you have questions concerning the instructions or survey, call the Comptroller's Local Government Assistance Division, toll free at 1-800-531-5441, ext. 9-4679. The Austin number is 512/469-4679.

Type A Sales Tax Permissible Projects



Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF PRIMARY JOBS.

In this subtitle, "project" includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are:

- 1) for the creation or retention of primary jobs; and
- 2) found by the board of directors to be required or suitable for the development, retention, or expansion of:
 - a) manufacturing and industrial facilities;
 - b) research and development facilities;
 - c) military facilities, including closed or realigned military bases;
 - d) transportation facilities, including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, related infrastructure located on or adjacent to an airport or railport facility, marine ports, inland ports, mass commuting facilities, and parking facilities;
 - e) sewage or solid waste disposal facilities; . . .



Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF PRIMARY JOBS. (cont'd)

- f) recycling facilities;
- g) air or water pollution control facilities;
- h) facilities for furnishing water to the public;
- i) distribution centers;
- j) small warehouse facilities capable of serving as decentralized storage and distribution centers;
- k) primary job training facilities for use by institutions of higher education; or
- l) regional or national corporate headquarters facilities.



What is a “Primary Job”?

Tex. Loc. Gov’t Code § 501.002(12)

- **a job that is:**
 - **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**
 - **is included in one of nearly sixteen (16) NAICS sector codes.**

What is a “Primary Job”? (cont’d)

- NAICS sector code categories include:
 - crop production;
 - animal production;
 - forestry and logging;
 - commercial fishing;
 - support activities for agriculture and forestry;
 - mining;
 - utilities;
 - manufacturing;
 - wholesale trade;
 - transportation and warehousing;
 - information
 - securities, commodity contracts, and other financial investments and related activities;
 - scientific research and development services;
 - management of companies and enterprises;
 - Telephone call centers;
 - correctional institutions; and
 - A job included within National Security sector number 928110.

Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS.



In this subtitle, “project” includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:

- 1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;
- 2) telecommunications and Internet improvements; or
- 3) beach remediation along the Gulf of Mexico.

Sec. 502.052. USE OF TAX REVENUE FOR MASS TRANSIT-RELATED FACILITIES.

A corporation may, as authorized by the corporation's board of directors, spend tax revenue received under this subtitle for the development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.

Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF PROJECT; EXCEPTIONS.

(a) Except as otherwise provided by this section, a Type A corporation may not undertake a project the primary purpose of which is to provide:

- (1) a transportation facility;
- (2) a solid waste disposal facility;
- (3) a sewage facility;
- (4) a facility for furnishing water to the general public; or
- (5) an air or water pollution control facility. . . .

Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF PROJECT; EXCEPTIONS.

(c) A Type A corporation may undertake a project the primary purpose of which is to provide:

- 1) a general aviation business service airport that is an integral part of an industrial park;
- 2) a port-related facility to support waterborne commerce; or
- 3) an airport-related facility, if the authorizing municipality:
 - A. is wholly or partly located within 25 miles of an international border; and
 - B. has, at the time the project is approved by the corporation as provided by this subtitle:
 - i. a population of less than 50,000; or
 - ii. an average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period for which data is available that precedes the date the project is approved.

APPROVAL OF PROJECTS

Type A Corporations

Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT.

- (a) The corporation's authorizing unit will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.
- (b) A corporation's authorizing unit is entitled to access to the corporation's books and records at all times.

PROMOTIONAL EXPENDITURES

Sec. 504.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSES.

A Type A corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.

JOB TRAINING

Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING.

A corporation may spend tax revenue received under this subtitle for job training offered through a business enterprise only if the business enterprise has committed in writing to:

- (1) create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or
- (2) increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.



THE END