



Type A Economic Development Sales Tax

McKinney Economic Development Corporation

October 17, 2017

What is the tax rate for a Type A sales tax?

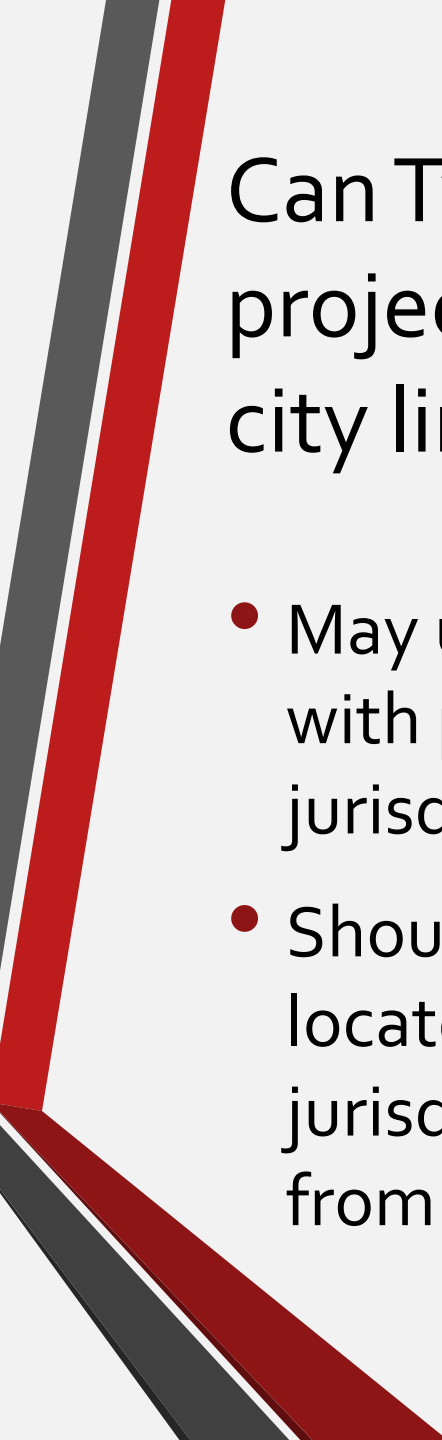
- The sales tax rate for a Type A sales tax is in increments of $\frac{1}{8}$ th of one-percent ($\frac{1}{8}$ th to two (2) percent).
- The total rate for all local sales and use taxes may not exceed two (2) percent.
 - Tex. Loc. Gov't Code Ann. §§504.252(b) and 505.252(b) (as amended by H.B. 157 (2015)).

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

- Must enter into a performance agreement with the business enterprise.
- 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.

Can Type A corporation hire an independent third party to conduct business recruitment or development?

- The Act requires a written contract approved by the board of directors for third party business recruitment efforts.
- The penalty is
 - Up to \$10,000 fine
 - Texas Attorney General's Office may bring an action to recover the penalty in Travis County District Court or the district court in which the violation occurred.
 - Tex.Loc.Gov't Code §502.051.



Can Type A corporation undertake projects which are located outside the city limits of the eligible city?

- May undertake projects outside of the city limits with permission of the governing body that has jurisdiction over the property. §501.159(a).
- Should corporation decide to undertake a project located completely in the city's extraterritorial jurisdiction or beyond, it should get approval from the county commissioners court.

Who administers and oversees a Type A sales tax?

- Type A sales tax is administered by non-profit corporations.
- Corporations are governed by the Development Corporation Act, Chapters 501 to 505 of the Texas Local Government Code, and Texas Non-Profit Corporation Act.
- The corporations through a board of directors determine which projects to fund.
- City council retains approval authority over all expenditures of the corporation through approval of MEDC annual budget.
§501.073(a) and 501.054(b)(2).

Who administers and oversees a Type A sales tax? (cont'd)

- In Texas Attorney General Opinion JC-0488 (2002) (“Before addressing the City’s principal concern, we address its assumption that the City, rather than its section 4B development corporation, may expend the sales tax proceeds for the purposes authorized by the voters. This assumption is contrary to the Act.”)
- Section 501.054 of Texas Local Government Code – A corporation “with respect to a project, may exercise all powers necessary or appropriate to effect a purpose for which the corporation is organized, subject to the control of the governing body of the corporation’s authorizing unit.”

Does city council have to approve expenditures for permissible Type A projects?

- The Type A corporation 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) through the budget approval process.

Does city council appoint the directors of the Type A corporation?

- Type A board of directors consists of at least five (5) directors.
 - MEDC – 7 member board
- Type A board members are appointed by city council and can be removed with or without cause.

Who receives the Type A sales tax proceeds?

- State Comptroller remits Type A sales tax proceeds to the city.
- The city upon receiving its local sales tax allotment from the Comptroller must remit the sales tax to the Type A corporation.
 - §§504.301 and 505.301.

How long a term do Type A board of directors serve?


- Type A board of directors serve a term not to exceed six (6) years. §504.051(c).
 - MEDC – 2 year terms

Can a Type A director be reappointed to a subsequent term?

The Attorney General concluded Type A board member could be reappointed to a subsequent term, absent any contrary provision in the articles of incorporation or bylaws, or in a city charter, ordinance or resolution of the city.

- Op.Tex.Att’y Gen. No. JC-0349 (2001).

City of McKinney Board Policy – three (3) consecutive, full two-year terms.




Who determines which board members serve as president, secretary and other officers of the corporation?

The board of directors appoint the officers to serve as president, secretary, and other officers.

- Tex. Loc. Gov't Code §§504.052 and 505.053.

How long a term do the president, secretary and other officers serve as an officer?

- One term as officer is the term provided for in the certificate of formation or bylaws.
- But, one term cannot exceed three (3) years.
 - MEDC – officers have 1 year term
- 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).



Must a Type A board member be a resident of the city?

- The Development Corporation Act does not require a Type A director to be a resident of the city.

Can city council members serve as directors on the Type A corporation?

- The Development Corporation Act does not address whether council members may serve on the Type A board.
 - In Texas Attorney General Opinion JC-0547 (2002), the Attorney General noted service on the board of directors is not a “public officer.” Accordingly, such dual service on the Type A board would not violate the common-law doctrine of incompatibility nor dual office holding.

What constitutes a quorum of the Type A board of directors?

- A majority of the board constitutes a quorum.
- **Type A**: Generally, three (3) members of a five (5) member Type A board constitute a quorum.

§504.053.

- MEDC – quorum is 4 of the 7




Are Type A board of directors paid?

The directors serve without compensation but must be reimbursed for actual expenses.
§501.062(d).

Are the board meetings of Type A board subject to the Open Meetings Act?

- Type A corporations are subject to the Open Meetings Act. §501.072.
- All meetings of the Type A board must occur within the city limits.



Are Type A corporations subject to the Public Information Act?

Type A corporations are subject to the Public Information Act. §501.072.

Can a Type A corporation 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).

Must Type A corporations conduct public hearings prior to funding Type A projects?

- Type A corporations are required to obtain city council approval of its project budget.
- Type A corporations generally do not have additional public notice and public hearings requirements on individual projects.


Must Type A corporations publish notice of any hearings on proposed projects?

- Generally, Type A corporations are not required to publish notices of proposed projects.
- When a Type A board pursues a particular project, city council must approve the project.
- Three exceptions requiring the publishing of notices:
 - sports venue projects,
 - pursuing Type B projects, and
 - maintenance and operating costs of a project.

Economic Development Corporation Report

- Section 502.151 of the Texas Local Government Code provides the following:
 - Requires all Type A corporations to submit an annual report to the State Comptroller's Office
 - The report must be submitted by February 1 each year
 - \$200 penalty failure to file
 - Comptroller must report to Legislature in even numbered years.

Economic Development Corporation Report

| | | | |
|---|----------------------------------|---|--|
|  01-138 <small>(Rev. 10/2003)</small> | | TEXAS COMPTROLLER OF PUBLIC ACCOUNTS | |
| ECONOMIC DEVELOPMENT CORPORATION REPORT <i>—Fiscal Year Ending 2003</i> | | | |
| Corporation name _____ | | | |
| Contact person _____ | | Title _____ | |
| Street address _____ | | | |
| City _____ | | State TEXAS | ZIP code _____ |
| 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 512/475-0664 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.

- Indicate your corporation's fiscal year _____
- 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 | |
- 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 | \$ _____ |
- 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 | \$ _____ |
- List the corporation's capital assets. (Exclude office equipment.)

PERSON COMPLETING THE FORM

| | | | |
|------------------|-----------------|-------------|------------------------------------|
| Print name _____ | | Title _____ | |
| sign here | 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. 3-4679. The Austin number is 512/463-4679.

Type A Sales Tax Permissible Projects



What are permissible Type A projects?

- Currently, Type A corporations may fund the following projects which must create or retain primary jobs:
 - manufacturing and industrial facilities;
 - research and development facilities;
 - military facilities;
 - recycling facilities;
 - distribution centers;
 - small warehouse facilities;
 - primary job training facility by institutions of higher education; and
 - regional or national corporate headquarters.
 - Tex.Loc.Gov't Code §§501.101 and 504.103.

What are permissible Type A projects? (cont'd)

- Additionally, Type A corporations may fund the following projects without creating or retaining primary jobs:
 - job training classes;
 - certain targeted infrastructure;
 - career center not located within the taxing jurisdiction of a junior college district;
 - general aviation business airport which is an integral part of an industrial park;
 - port related facilities; and
 - development, improvement, maintenance commuter rail, light rail, or motor buses.

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

Tex.Loc.Gov't Code §501.103.

What is a “Primary Job”?

- In 2003, the Texas Legislature required most Type A projects create or retain primary jobs.
- The term primary job means
 - 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”?

- The 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.

Sales Tax Proceeds for Promotional Purposes?

- Type A corporations may spend no more than ten percent (10%) of the corporate revenues for promotional purposes.
- Texas Attorney General Opinion GA-0086 (2003)
 - Promotional purpose is a question of fact for the board of directors to resolve in the first instance.
 - The City Council could approve or disapprove of a particular promotional expenditure.
 - The Attorney General noted a corporation may not spend more than ten percent (10%) of its current annual revenues for promotional purposes in any given year. Yet, unexpected revenues specifically set aside for promotional purposes in past years may be expended for such purposes.

Can Type A corporations expend sales tax proceeds for job training classes?

- A corporation may spend tax revenue received under this Act for job training offered through a business enterprise only if the business enterprise has committed in writing to:
 - 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
 - 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.
- Tex. Loc. Gov't Code Ann. §501.162.

Streets and Sewers

Could a Type A corporation fund street and/or sewer projects?

Section 501.103

- “Project” includes expenditures 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: **streets and roads**, . . . , water and **sewer utilities**, . . . **drainage**,.

Streets and Sewers (cont'd)

Attorney General Opinion GA-320 (2005)

- An expenditure for road construction may qualify as a “project” under section 2(11)(A)[now 501.103] of the Development Corporation Act . . . provided the board of directors of an industrial development corporation finds that the expenditure is “required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises.”

Streets and Sewers - Questions

1. Can Type A repave all streets within a city or fund the installation of a sewer pipeline in the city?
2. Can Type A funds be used to pave/repave streets in a commercial district or fund the installation of a sewer pipeline in a commercial or industrial park?
3. Can Type A pay for streets or installation of sewer pipelines to a new residential subdivision?

Streets and Sewers - Questions

You decide a particular street or sewer project is permissible. What “costs” can you pay related to the street or sewer project?

- a) Can you pay for right-of-way acquisitions?
- b) Can you purchase the land for the street or sewer?
- c) Can you purchase easements?
- d) Can you pay for engineering, surveying, and legal cost related to the street or sewer project?

Definition of “Cost” – Section 501.152

“Cost” with respect to a project, means the cost of the acquisition, cleanup, construction, reconstruction, improvement, or expansion of a project, including

(1) the cost of acquiring all land, rights-of-way, property rights, easements, and interests; . . .

(9) the cost of engineering or legal surveys;

(10) the cost of plans, specifications, or surveys;

(11) other expenses necessary or incident to determining the feasibility and practicability . . .

Public Parks

Can Type A corporation fund park projects?

- **Section 505.152** “Project” includes land, buildings, equipment, facilities, expenditures and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children’s sports, athletic, entertainment, tourist, convention, and **public park purposes** and events, **including** stadiums, ball parks, auditoriums, amphitheaters, concert halls, **parks and park facilities**, open space improvements, . . .

Type A Pursuing a Type B Project

- Election on uniform election date authorizing Type A sales tax proceeds for Type B project, or “specific category of projects.”
- Project or category of projects must be clearly described on the ballot.
- If maintenance and operating costs are to be paid, the ballot language must clearly state that fact.
 - Tex. Loc. Gov’t Code Ann. §504.152.

Type A and Retail

- If a Type A corporation wishes to assist with retail development, the Type A corporation may provide economic development assistance in the following areas:
 - Section 501.103 – targeted infrastructure
 - Section 504.105 – promotional expenditures
 - Section 501.162 – job training classes