

Economic Development Sales Tax

Susan Combs, Texas Comptroller of Public Accounts

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.

These cities may adopt an economic development sales tax rate of 1/8, 1/4, 3/8 or 1/2 of 1 percent if the new total rate of all local sales and use taxes would not exceed 2 percent.

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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 (Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant and Travis) may also use Type A for economic development efforts but a city's eligibility varies from county to county. For information on which cities are eligible in these counties, call the Comptroller's Local Government Assistance section 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

The boards of directors of both Type A and Type B corporations serve 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 less where meetings may be held at any location within the county.

The composition of a corporation's board of directors and the length of a member's term differs between Type A and Type B.

Under 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 Type A corporation board members.

Under Type B: The city council must appoint a board of seven directors. Three of the seven directors 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 of a corporation authorized under Type B must be residents of the city authorizing the sales tax if the city's population is 20,000 or more. For



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cities with populations of 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 which borders the county in which a majority of the city is located.

Administration Expenses

Type A and Type B corporations are authorized to pay the administrative expenses (including staff) to implement the corporation's projects.

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

Training

Certain officials of cities creating Type A and Type B corporations and administrators of the corporations are required to attend an economic development training seminar within 90 days of taking office. Attendance is mandatory 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. The seminar must be repeated once each 24 months. 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

Type A and Type B corporations' boards of directors are subject to the Texas Open Meetings Act, found in Chapter 551 of the Government Code.

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. Further, these small cities must give the resolution at least two (2) separate readings when such projects require an expenditure of \$10,000 or more.

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.

Type A corporations are required to hold public hearings only when considering an election to authorize a Type B project.

How can tax revenue be used?

Type A Sales Tax

The Type A sales tax is primarily intended for manufacturing and industrial development. Cities may use funds raised by this sales tax to acquire or 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



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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 Corporations may use their revenue to undertake projects eligible under Type B without voting to abolish the

Type A tax and impose the Type B tax. In cities with populations of 7,500 or less with both a Type A and Type B 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 Type B project under consideration. Type A corporations also may spend Type A sales tax funds to clean up contaminated property; provided that the city holds a separate election to gain voter approval. A corporation created under Type A cannot assume, or pay principal or interest on, debts that existed before the city created the corporation.

Type B Sales Tax

The Type B sales may fund additional project types, including quality of life improvements, in addition to all projects authorized for Type A

corporations. Type B corporations may use funds to acquire or pay for land, buildings, equipment, facilities expenditures, targeted infrastructure and improvements found by the board of directors to be required or suitable for use for:

- professional and amateur sports (including children's sports) and athletic facilities, tourism and entertainment facilities, convention facilities, public park purposes 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; and
- affordable housing.



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;
- 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
- any improvements or facilities that are related to any of those projects and any other project that the board determines will contribute to the promotion or development of new or expanded business enterprises that create or retain primary jobs.

Type B corporations created by cities with a population of 20,000 or less and those classified as "landlocked" communities may use sales tax proceeds to fund projects that promote new or expanded business development without the project having to create or retain primary jobs. A

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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landlocked community is defined as a city that is wholly or partly located in either Harris or Dallas counties and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city. 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. However, this additional approval step does not apply to a landlocked community.

Sewer utilities, site improvements and beach remediation along the Gulf of Mexico are also allowable infrastructure that development corporations may fund to promote new or expanded business development.

Type B corporations may, following a separate election to gain voter approval, spend Type B 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 when 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 all Type A and Type B corporations to file an annual

report with the Texas Comptroller of Public Accounts by Feb. 1 of each year. The report must include the corporation's economic development objectives, total 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 office or online at <https://ecpa.state.tx.us/edcr/EdcrSearch.jsp>.

The Comptroller will use this information to compile the Economic Development Corporation Report to the Legislature each biennium. The most recent report is available at www.texasahead.org/lga/ecodev.html.

How to impose the tax and call an election?

City voters must approve this special, dedicated tax at an election held for that purpose.



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



Cities may call for this election in one of two ways:

- the governing body may call an election on its own; or
- the city 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 (SOS) at 512-463-5650 or toll free at 1-800-252-8683. Additional information is available on the SOS website at www.sos.state.tx.us/elections.

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

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

How long is the tax effective?

A 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. A city imposing a tax for a specified period may extend the period or re-impose the tax 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 re-imposed 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.

What about tax increases or tax decreases?

Initiating Ordinance

As with adoption, the sales and use tax must be increased or decreased in increments of $\frac{1}{8}$ of 1 percent with a minimum of $\frac{1}{8}$ of 1 percent and a maximum of $\frac{1}{2}$ of 1 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 a tax under this Act, the city's governing body may adopt an ordinance calling for an election to increase, reduce or repeal the tax rate. The ordinance may be initiated in either of two ways:

- by a majority vote of the governing body; or
- by petition of registered voters.

Petition Requirements

In order to initiate a change in the rate of a Type A tax by petition, 10 percent or more of the registered voters must petition the city to call an election for that purpose. Procedures for tax rate changes are not addressed under Type B; however, general provisions of the 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 petitions 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 adopt the ordinance calling for the election

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within 60 days after receiving it to be held on the next uniform election date.

Combined Ballot Proposition

If a city wants 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 a proposition to lower or repeal any dedicated or special purpose municipal sales tax, and by the same proposition raise or adopt any other dedicated special purpose municipal sales tax. Only sales tax elections that may be called by the governing body of a city are eligible for combined ballot propositions. A combined sales tax proposition would have to contain substantially the same language as required for lowering, repealing, raising or adopting each tax, as appropriate. If a combined sales tax proposition is defeated, there would be 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 that the proposition did pass.

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.

Comptroller's Address

Comptroller of Public Accounts
Revenue Accounting Division
Tax Allocation Section
P.O. Box 13528
Austin, Texas 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-September has elapsed. The Comptroller's office will notify area merchants to begin collecting the new tax rate on Oct. 1. The city will begin receiving revenue from the tax 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.



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Need more information on the economic development sales tax?

Comptroller representatives can provide presentations on matters related to local sales tax, including Type A and Type B sales taxes. Representatives can also 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 Office of the Attorney General (OAG) has an Economic Development Handbook containing more detailed information and citations to the various statutes, which can be viewed on the OAG website oag.state.tx.us/newspubs/publications.shtml and clicking on “Economic Development Handbook.”

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.

Ballot Language for the 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 _____ of one percent. (Insert one-eighth, one-fourth, three-eighths or one-half 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 city attorneys when drafting the ballot language under this section.

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

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We're Here To Help! *Call Toll-Free!*

If you have questions or need information on a specific tax, please call our toll-free numbers:

1-800-252-5555

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

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 Machine Tax
Hotel Occupancy Tax

1-800-252-1386

Certificates of Account Status/Good Standing
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

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512-463-4600 in Austin
512-475-0900 (FAX).