

Economic Development for Texas Cities

Riley Fletcher
Basic Municipal Law Seminar
February 13, 2009

Jeff Moore
Brown and Hofmeister, L.L.P.



Type A and Type B Sales Tax



1. What is Type A and Type B Sales Tax?

- Type A and Type B sales tax are sales taxes which cities may impose for economic development.
- Development Corporation Act.
 - Chapter 501 to 505 of Texas Local Gov't Code
- Cities must hold a sales tax election to implement the tax.
- If adopted the city could not exceed the two (2) percent local sales tax limit.
 - State sales tax rate 6.25%
 - Local sales tax cannot exceed 2.00%



5. When Must a Type A or Type B Sales Tax Election be Held?

- Type A or Type B sales tax election must be held on a uniform election date.
- The uniform election dates are:
 - the second Saturday in May;
 - the first Tuesday after the first Monday in November.



8. What is the Tax Rate for a Type A or Type B Sales Tax?



- The sales tax rate for either a Type A or Type B sales tax is 1/8th, 1/4th, 3/8ths or 1/2 of one percent.
- The total rate of all local sales and use taxes may not exceed two (2) percent.

11. 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.
 - Section 501.101 of Tex. Loc. Gov't Code.



11. 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 to support waterborne commerce; and
 - Operation of commuter rail, light rail, or motor buses. SB 1089 (2007).

11. Permissible Type A Projects (cont'd)



- Type A corporation created by a city located within 25 miles of an international border,
 - population of less than 50,000 or
 - average rate of unemployment that is greater than the state average rate of unemployment
 - may provide land, buildings, facilities, infrastructure, and improvements required or suitable for the development or expansion of airport facilities.

11. Permissible Type A Projects (cont'd)

- Type A projects which may be funded for certain cities:
 - Hidalgo County:
 - Expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises including airports, ports, and sewer or solid waste disposal facilities, provided:
 - the corporation is created by a city located wholly or partly in Hidalgo county; and
 - does not support a project with Type A or Type B sales tax revenue.



12. What are Permissible Type B Projects?

- The following Type B projects which must create or retain primary jobs:
 - manufacturing and industrial facilities;
 - research and development facilities;
 - military facilities, including closed or realigned military bases;
 - Transportation facilities;
 - Sewage or solid waste disposal facilities;
 - recycling facilities;
 - air or water pollution control facilities;
 - distribution centers;
 - small warehouse facilities, distribution centers;
 - primary job training facilities for use by institutions of higher education;
 - regional or national corporate headquarters facilities; and
 - projects which promote or develop new or expanded business enterprises including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, or general municipally owned improvements.
 - Section 501.101 and 505.155 of Tex. Loc. Gov't Code.

12. Permissible Type B Projects (cont'd)

- Type B projects which may be funded without the creation or retention of primary jobs include,
 - job training classes (§ 501.102);
 - certain targeted infrastructure which promotes or develops new or expanded business enterprises (§ 501.103);
 - land buildings, equipment, facilities, improvements, and expenditures required or suitable for a career center, provided the area benefited is not located in the taxing jurisdiction of a junior college district (§ 501.105);
 - professional and amateur sports, athletic facilities; entertainment, tourist, convention facilities; public parks and related open space improvements (§ 505.152);
 - affordable housing (§ 505.153); and

12. Permissible Type B Projects (cont'd)

- Type B projects which may be funded without the creation or retention of primary jobs include,
 - certain water supply facilities and water conservation programs with voter approval (§ 505.154);
 - development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses, (§ 38A) (as added by SB 1089, effective date May 17, 2007);
 - Certain airport facilities, (§ 505.151).



12. Permissible Type B Projects...



- Type B corporation created by a city located within 25 miles of an international border,
 - population of less than 50,000 or
 - average rate of unemployment that is greater than the state average rate of unemployment
 - may provide land, buildings, facilities, infrastructure, and improvements required or suitable for the development or expansion of airport facilities.
 - (§ 501.106).

12. Permissible Type B Projects...

- Type B projects which may be funded for certain cities:
 - Hidalgo County: Expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises including airports, ports, and sewer or solid waste disposal facilities, provided:
 - the corporation is created by a city located wholly or partly in Hidalgo county; and
 - Does not support a project with Type A or Type B sales tax revenue.
 - (§ 501.107).

13. Permissible Type B projects...

- **Type B corporations whose revenue is less than \$50,000:**
 - Land, buildings, equipment, facilities, and improvements found by board of directors to be required or suitable for the development, retention, or expansion of business enterprises provided:
 - Has not collected \$50,000 or more preceding two fiscal years; and
 - City Council authorized the project by adopting a resolution following two (2) separate readings conducted at least one week apart.
 - Section 505.156.

14. Permissible Type B Projects...

- **Type B corporations located in a city with a population of less than 20,000:**
 - Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by board of directors to promote new or expanded business development.
 - Expenditure of more than \$10,000:
 - City Council adopts a resolution authorizing the project after giving the resolution at least two (2) separate readings.
 - Section 505.158.

15. Permissible Type B Projects...

- **Type B corporations located in a “landlocked community” located in Harris or Dallas County:**
 - The term “landlocked community” - city located wholly or partly in a county with a population of 2 million or more - has within its city limits and ETJ less than 100 acres that can be used for the development of manufacturing or industrial facilities.
 - Project is defined to mean “expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.”
 - Section 505.157.

Chapter 380 of the Texas Local Government Code

Riley Fletcher Seminar
February 13, 2009

Jeff Moore
Brown & Hofmeister, L.L.P.

1. What are Chapter 380 Grants?

- Chapter 380 of the Local Government Code
- Authorizes home-rule and general law cities to provide assistance for economic development
- Cities may provide monies, loans, city personnel, and city services for economic development



3. What Constitutes Serving a Public Purpose?



- Texas Constitution requires expenditures of city funds serve a “public purpose.”[Art. III, §52(a)].
- Constitutional amendment in 1987.
- Article III, section 52-a of the Constitution authorizes
 - “the making of loans and grants of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state . . . or the development or expansion of transportation or commerce in the state.”

5. Can you Abate Delinquent Taxes under Chapter 380 of the Local Government Code?

- Article III, section 55 of the Texas Constitution prohibits the extinguishing of debt.
- “Section 380.001(a) of the Local Government Code does not authorize a municipality, as part of an economic development program, to agree to abate a taxpayer’s delinquent taxes.” Tex. Att’y Gen. LO-95-090.

6. Can a City Provide a Municipal Sales Tax Rebate as a Form of Chapter 380 Grant?

- Whether recent legislative changes prevent Texas cities from providing chapter 380 grants in the form of a sales tax rebate.
- Tex. Att'y Gen. Op. No. GA-0137 (2004)
 - The Attorney General concluded the “Local Government Code authorizes municipalities to refund or rebate municipal sales taxes and otherwise expend public funds for certain economic development purposes.” Recent legislative change “does not invalidate existing tax rebate contracts, nor does it prohibit municipalities from executing new ones.”

Local Hotel Occupancy Tax

Riley Fletcher Seminar
February 13, 2009

Jeff Moore
Brown & Hofmeister, L.L.P.
Richardson, Texas

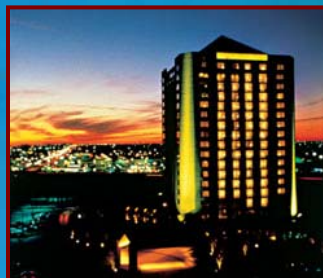
1. What is the Municipal Hotel Occupancy Tax?

- A tax cities can impose on visitors who stay in a hotel inside the city.
- Revenues generated by the various hotels are then remitted to the city.
- Hotel Occupancy Tax is governed by chapter 351 of the Texas Tax Code.



2. How is the Hotel Occupancy Tax Imposed?

- Adopt an ordinance.
- Applicable to both general law and home rule cities.
- Does not require voter approval.



3. What is the Municipal Hotel Occupancy Tax Rate?

- The Tax Code lists the various tax rates.
- Percentage on price per hotel room.
- Generally up to seven (7) percent.
- Certain cities are authorized to charge different rates.
- The highest rate is nine (9) percent.



10. What are Permissible Expenditures ?

- (a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:
 - (1) convention center facilities or visitor information centers, or both;
 - (2) registration of convention delegates;



Permissible Expenditures

- (3) advertising and conducting solicitations and promotional programs
- (4) promotion, improvement, and application of the arts;
- (5) historical restoration and preservation projects;
- (6) for a municipality located in a county with a population of 1,000,000 or less, expenses related to sporting events in which the majority of participants are tourists



Permissible Expenditures

- (7) enhancement and upgrading of existing sports facilities or fields, including facilities or fields for baseball, softball, soccer, and flag football, if:
 - The city owns the facilities or fields;
 - The city
 - Has a population of 80,000 or more and is located in a county that has a population of 350,000 or less; or
 - Has a population of at least 65,000 but not more than 70,000 and is located in a county that has a population of 155,000 or less; and
 - The sports facilities and fields have been used in the preceding calendar year a combined total or more than 10 times for district, state, regional, or national sports tournaments. (as added by HB 1734 (2007))

Tax Abatement Agreements

Riley Fletcher Seminar
February 13, 2009

Jeff Moore
Brown & Hofmeister, L.L.P.

1. What is a Tax Abatement Agreement?

- Chapter 312 of the Texas Tax Code.
- Authorizes property taxing entities excluding school districts to limit the property taxes assessed on real property or tangible personal property attached to real property.
- The property must be located within a “reinvestment zone.”
- Taxing units can abate the increase in value of the property due to improvements or repairs to the property for a period not to exceed ten (10) years.



2. Who May Enter into a Tax Abatement Agreement?

- Entities which levy ad valorem taxes, excluding school districts
- City can initiate the tax abatement process for property located within the city.
- County can initiate the tax abatement process for property located within the county (outside the city limits or ETJ of the city).
- City or County can initiate tax abatement process for property located within the ETJ of a city.

4. How Long Can a Tax Abatement Agreement Last?

- Ten (10) years.
- GA-0304 (2005), the Attorney General noted a city could execute a new tax abatement agreement with an owner on newly added business personal property added to the location which was not part of a previously executed tax abatement agreement.



5. What are the required steps to establish a tax abatement agreement?

- (1) resolution declaring an intent to participate in tax abatement agreements;
- (2) adopt guideline and criteria for agreements;
- (3) send notice to presiding officers of other taxing units on public hearing designating the reinvestment zone;
- (4) publish notice in newspaper of public hearing for reinvestment zone designation;
- (5) designate reinvestment zone by ordinance;
- (6) send notice of intent to enter into tax abatement agreement; and
- (7) enter into tax abatement agreement.

6. What Portion of the Appraised Property Value can the City Abate?

- A city can abate the increase in value of the property due to improvements or repairs made to the property.
- Example:
 - Property has value of \$1,000,000.00
 - Improvements will bring value to 1.4 million dollars
 - City can abate taxes which would be paid on the \$400,000 increase in value
 - Can abate 1% to 100% on taxes paid on \$400,000 increase for up to ten years.



The End

