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## State Official Briefs KEDC Board on 4A, 4B Regulations

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Sales tax revenue that has been designated for industrial development may be used for other municipal or “quality of life” development projects, but such a diversion of funds has its own restrictions, says Bob Bearden, sales tax law specialist with the State Comptroller of Public Accounts.

Allowance for the use of sales tax by a 4A corporation for a 4B project carries restrictions that include the city holding a special election with a separate ballot proposition for each 4B project or category of projects that would be funded by 4A monies, said Bearden, who spoke to Kilgore Economic Development Corporation's board of directors on Monday, January 23, in Kilgore City Hall. Before the special election can take place, the city must hold a public hearing following a 30-day public notice.

“We invited Mr. Bearden so that he could address questions we might have about the various options communities can exercise when they have 4A or 4B corporations,” said Amanda Nobles, KEDC's economic development director.

Nobles said that in light of the fact the Kilgore City Commission on January 10 considered a proposal to call a city election for the purpose of abolishing KEDC, a 4A corporation, and creating a 4B entity, there are obviously questions in the community about what such a move would entail. “Mr. Bearden is extremely knowledgeable in his field,” she said, “and he was able to enlighten us on the issues that face communities regarding the different ways revenues can be spent and the pitfalls of each.”

Bearden said there are distinct differences between 4A and 4B corporations, other than use of revenues.

Obligations that govern 4B corporations but not 4A corporations include the requirement to hold a public hearing prior to the expenditure of funds for the 4B project. As it currently stands, 4A corporation boards have the flexibility and discretion to authorize all 4A expenditures pending final approval by the city's governing board, with no public hearing required. The 4B corporations throughout the state are required to follow lengthy steps and hold a public hearing in order to get a proposed project approved for funding.

For example, if the city wanted to ask the voters to approve the use of 4A funds for 4B projects or if it wanted to ask voters to approve the creation of a 4B corporation, it must hold a public hearing prior to the election. Bearden said the city is required to publish in the newspaper once a week for four weeks a public notice of the hearing. At the hearing, the city would describe the specific 4B projects or categories of 4B projects and their impact on the city. Each project or category of projects would need to be listed as a separate ballot proposition. If the city election proposes categories of projects rather than specific projects, and the election passes, additional public hearings

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with published notice would be required to describe the specific projects to the public and to give the public a 60-day period in which a petition could be presented to the city requesting an election of the voters on that specific project.

Additional differences are that 4A corporations must have at least five directors (although there can be more), with no residency requirements for 4A directors. However, a 4B corporation's directors must live within the county or within 10 miles of the city limits if the city has less than 20,000 population. There can be no more than seven directors of a 4B corporation, and not more than four of the seven may be city council members or city staff.

KEDC director Gary Boyd pointed out that if a 4B corporation wanted to use its monies for a 4A project, the public hearing and possible election process it is required to complete might compromise its ability to compete with other 4A corporations in the area to attract new industry. "Also, these companies often insist on our keeping company information highly confidential, and it seems to me that running a 4A project through the 4B hearing and election process might compromise that confidentiality and limit our pool of willing prospects," said Boyd.

Bearden acknowledged Boyd's comment, saying, "Many companies have gotten smart about working the best deal through competition among communities, and there is no indication I've seen that things are any less competitive than they have been." He told the board that as far as maintaining confidentiality of prospects is concerned, he would defer to the Attorney General's office regarding that issue.

Even though the Kilgore commissioners rejected the January 10 proposal in a 4-to-1 decision, Nobles said the KEDC board wanted to seek further clarification of the issue from a state official. Bearden has authored a number of publications on local sales tax options and speaks regularly to governmental entities throughout the state in order to shed light on the local sales tax provisions.

In 1989, Kilgore voters approved the formation of KEDC as a 4A corporation, with its mission being the retention and attraction of primary employers in order to increase jobs for area residents and grow the tax base within the city. In the past, a 4A corporation could not authorize expenditures that fell outside the realm of industrial and business development if it did not directly benefit a primary employer or qualify as an infrastructure project for a non-primary employer. However, Bearden said that changed in 1997, when the Texas Legislature amended the Development Corporation Act to allow the voters of an area to approve, in a special election, the use of 4A economic development sales tax monies for a 4B project. But any use of 4A monies for a 4B project must be approved by the city's voters at an election held on that specific project, or categories of projects and a public hearing must be conducted before the city holds such an election.

For example, if the city wanted to ask the voters to approve the use of 4A funds for specific 4B projects such as construction of a new city swimming pool as well as a new civic center, there would need to be a public hearing explaining the two projects, their estimated cost and their impact. Two separate ballot propositions would be required for the election. The voters could approve one or both propositions. If approved, the specific project or

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projects could be funded.

If the city wanted to ask the voters to approve the use of 4A funds for categories of 4B projects such as convention facilities and public parks, it must hold a public hearing prior to the election, and at the hearing the project categories and the impact of those project categories would be presented. If approved by the voters, an additional public hearing would need to be scheduled prior to the funding of each specific project within the approved category. At the public hearing, the city's residents must be informed of the estimated cost and impact of the proposed project. A 60-day period must pass following the notice for public hearing before the project can be funded in order to allow for the public petition process.

"It's true that the 4A monies are more geared toward primary employer attraction and retention and attracting good jobs to a community, which expands the tax base and mitigates the community's property tax burden," said Bearden, "but the 4B tax may be more beneficial to some communities than a 4A tax." For instance, there are a number of "bedroom communities" such as suburban cities in large metropolitan areas that do not qualify for 4A sales taxes and have opted for the 4B tax for community development. They may not have the available land for industrial development or they just do not want industrial development in their community, he said, so they may decide that building a park would be more beneficial to their quality of life than providing incentives for new industry to bring new jobs. "Every community has to weigh out what's best for them," he said.

If a city's voters approve abolishing an existing 4A corporation in favor of a 4B corporation, the change can occur after completion of one complete calendar quarter from the time the Comptroller is notified of the election results, but not until all debts and obligations of the 4A corporation have been satisfied. The 4A corporation would continue to exist only in order to satisfy those debts and obligations, and would have no funds for administrative functions or staff. Then, the corporation would transfer any remaining assets to the city, and the 4A corporation would then dissolve. Future allocations of the sales tax would then become 4B revenues.

Bearden said that as of November 2005, there are 538 cities in Texas that have adopted a 4A or 4B sales tax, and 61 percent of those cities have populations of less than 5,000. There are 123 cities with 4A corporations, 318 cities with 4B corporations, and 97 cities that have separate 4A and 4B corporations.

Bearden outlined the specific projects for which 4A taxes may be used: facilities for manufacturing and industrial projects, as well as research and development, recycling, distribution, warehouse, and military. Other uses include job training and non-primary business infrastructure projects. He pointed out that, according to the current economic development laws, both 4A and 4B corporations may make "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 street and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, and telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico."

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Corporations with 4B tax monies may make expenditures for any project allowable under the 4A provisions but may also offer incentives for retail businesses if the city population is 20,000 or less, sports and athletic facilities, entertainment, tourist, and convention facilities, and public parks and related open space improvements. Also, 4B tax revenues can be used for affordable housing as may be designated by HUD guidelines and for water supply and conservation programs with special voter approval.