



STATE OF TEXAS
DEPARTMENT OF ECONOMIC DEVELOPMENT

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OPINION COMMITTEE

May 6, 2002

John Cornyn
Attorney General
209 W. 14th Street
Price Daniel, Sr. Building, 8th Floor
Austin, TX 78701

FILE # ML-425810-02
I.D. # 425810

Dear General Cornyn:

Texas Economic Development (TxED) requests your assistance regarding enterprise project designations under the Texas Enterprise Zone Act, Government Code, Chapter 2303 (the Act).

Specifically, TxED requests an opinion regarding whether a business that is currently designated as an enterprise project and expects to receive the maximum allowable tax benefit for the current project designation may apply for and receive an additional, concurrent project designation in the same enterprise zone and receive additional tax benefits.

The Act encourages investment and job creation in economically distressed areas of the state by allowing businesses that locate in designated enterprise zones to receive tax benefits. Communities create enterprise zones based on statutory criteria, such as unemployment, population loss and poverty. The communities nominate eligible businesses located in enterprise zones as enterprise projects. Enterprise projects are designated by TxED based on the business's commitment to create or retain permanent jobs, make capital investment in the enterprise zone, fill at least 25 percent of new jobs with residents of the zone or economically disadvantaged individuals, and maintain a specified level of employment from the date jobs are certified by TxED for at least three years. An enterprise project designation lasts five years.

The Act allows 85 enterprise project designations statewide during the fiscal year 2002-2003 biennium. The Act limits the number of enterprise projects communities may nominate. The Act and the Tax Code limit the refund benefit each enterprise project may receive per year based on the number of jobs allocated by TxED for benefits.

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Section 2303.407 of the Act provides:

When the department designates a business as an enterprise project, the department shall allocate to the project the maximum number of new permanent jobs or retained jobs eligible to be included in a computation of a tax refund for the project. The number may not exceed 250 or a number equal to 110 percent of the number of anticipated new permanent jobs or retained jobs specified in the application for designation of the business as an enterprise project under section 2303.405, whichever is less.

Section 151.429(c) of the Tax Code provides:

The total amount of tax refund that an enterprise project may apply for in a state fiscal year may not exceed \$250,000. If an enterprise project qualifies in a state fiscal year for a refund of taxes in an amount in excess of the limitation provided by this subsection, it may apply for a refund of those taxes in a subsequent year, subject to the \$250,000 limitation for each year. However, an enterprise project may not apply for a refund under this section after the end of the state fiscal year immediately following the state fiscal year in which the enterprise project's designation as an enterprise project expires or is removed. The total amount that may be refunded to an enterprise project under this section may not exceed the amount determined by multiplying \$250,000 by the number of state fiscal years during which the enterprise project created one or more jobs for qualified employees.

In other words, a business that has been designated as an enterprise project by TxED and that has been allocated 250 jobs cannot receive more than \$250,000 in sales and use tax refunds for each year of the five year designation, or \$1,250,000.

TxED has been asked to allow a business that has received the maximum job allocation of 250 jobs to receive a second enterprise project designation. The second enterprise project is in the same zone and will run concurrent with the designation made three months previously. The second project is for a new product line but is not a separate business function or tax entity.

TxED has historically allowed businesses to obtain multiple concurrent project designations under the following circumstances:

- the business had not been allocated the maximum number of jobs, for maximum benefits, or
- the business's second project was in a different enterprise zone.

TxED has never been presented with the issue of whether a single business could receive multiple concurrent designations, each with maximum job allocations, in the same zone.

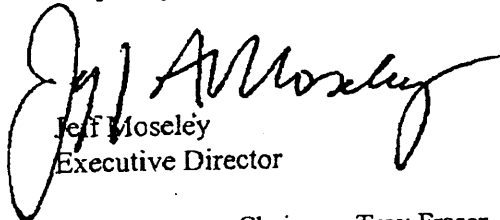
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In 2001, the H.B. 2686 of the 77th Legislature amended the Act to lower the job creation requirement to receive the maximum benefits from 625 jobs to 250 jobs until September 1, 2005. (Acts 2001, 77th Legislature, ch. 1134, p. 2519.) This increases the likelihood that businesses will now seek multiple maximum designations. Testimony presented on H.B. 2686 indicated that lowering the job creation requirement would not result in a fiscal impact to the state.

While TxED has been presented with policy arguments in favor of allowing multiple concurrent project designations, the statute does not address the issue. Further, it is not clear whether the limitation on benefits imposed by the Act and the Tax Code would prevent the additional enterprise project designations. TxED seeks your opinion regarding whether the Act and the Tax Code permit TxED to allow multiple concurrent project designations in a single zone for businesses with existing enterprise project designations that have been allocated the maximum allowable number of jobs for benefits.

Thank you very much for your assistance. If I can provide you with additional information, please contact me at 936-0100.

Very truly,


Jeff Moseley
Executive Director

cc:

Chairman Troy Fraser, Senate Business and Commerce Committee
Chairman Jim Solis, House Economic Development Committee
Senator Royce West
Representative Judy Hawley
Representative Gene Seaman
Representative Juan Hinojosa
Massey Villarreal, Chairman, TxED Governing Board
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