

City Revitalization and Improvement Zone

Question and Answers

November 25, 2013

Revised, November 13, 2014

Local Tax Clarifications

Q: Section VI. A. 2. and Section VI. A. 3. have different time periods for the state and local taxes to be deposited to the CRIZ Fund. Is that intentional? e.g., must all City and School District eligible taxes for 2013 (assumed baseline year) be deposited into the CRIZ Fund by October 15, 2014 even if those taxes were already expended and/or budgeted for other costs?

A: There is no time period difference for transfers to CRIZ Funds. They are both by 10/15.

Q: How can earned income tax (EIT) taxes withheld from 2013 wages for employees not residents of the school district where the CRIZ is located be deposited in the CRIZ Fund?

A: Earned income tax is defined as a tax imposed on earned income within the zone under Act 511, which a city or a school district contained entirely within the boundaries of or conterminous with the city is entitled to receive. Generally, local earned income tax is collected by the employer and remitted to the employee's resident municipality.

Q: Section X.C.4. indicates that earned income taxes withheld from employees of a qualified business or construction contractor be reported. If those employees live in a different school district than where the CRIZ is located and that other school district has an EIT, what happens to those EIT taxes?

A: Same as above.

Q: As I read Section X, subsection C.4 on page 6 it states that one of the local taxes on the CRIZ report will be the earned income tax imposed by a city or school district entirely within a city where a CRIZ is located and withheld from employees of a qualified business or construction contractor for work performed in the CRIZ. In other words, the earned income tax that would be credited to the CRIZ would only be that withheld from an employee who works within the CRIZ, lives in the city and pays his/her earned income tax to the city or school district located entirely within the city. What I am attempting to confirm — and hopefully you agree — is that this language does not allow a city with a CRIZ to retain earned income taxes imposed by other municipalities on individuals employed in the CRIZ but who live outside the city. This is what happened in Allentown under the NIZ program that needed to be fixed earlier this year.

A: EIT CRIZ employee taxes may be collected for those who live in the city and work in the CRIZ.

Q: Section VI.B. indicates that after the baseline year state taxes over and above the baseline but all local taxes are transferred to the CRIZ Fund. Is that intentional? e.g., must all City and School District eligible taxes for 2014 be deposited into the CRIZ Fund and not local taxes over and above the baseline?

A: No. Eligible local taxes collected less local tax refunds in the prior calendar year less the amount of the local baseline tax for the CRIZ is to be transferred to the CRIZ Fund.

Q: Would EIT be included in the baseline for collateral purposes? If so, is there a need to clarify in the application what is in and what is out of the baseline?

A: Local taxes are not included in state baseline calculation. Calculation of baseline can be found in Section 1810-C and which clearly says "state" baseline tax amount. Section 1 811-C(c) for submission has the local authority collecting eligible taxes by October 15th and must submit to the State Treasurer local tax- local tax refunds – local baseline tax. There is no statutory language concerning the use of the local baseline. Given it is silent and if the locals are keeping the local baseline, then one can allow for using the local baseline, which includes EIT, to be provided to the CRIZ.

Q: Most municipal authorities may not have finalized audits by April 1st. Can the dates be changed?

A: The date is in statute.

Q: Are parking fees paid to a private operator that leases parking garages in a CRIZ from a parking authority subject to PA Sales Tax, thus includable in the CRIZ calculation of state taxes attributable to the CRIZ?

A: Parking fees aren't subject to sales tax.

Q: Can a designated zone include a structure, or complex of structures, that include industrial uses?

A: Yes.

Q: Will local taxes over and above the local baseline certified as attributable to the CRIZ be transferred to the CRIZ fund?

A: Yes.

Q: Can acquisition of all or part of a facility be eligible for CRIZ funds use?

A: Yes.

Must the amount of money transferred from the CRIZ Fund be matched by private money at a maximum ratio of five CRIZ Fund dollars to one private dollar?

A: Yes.

Q: Earned income tax is required by ACT 32 to be distributed monthly to the employee's resident municipality and school district. Tax collected for the tax year 2014 would be distributed within 30 days of its collection. How does the local tax collector reconcile the 2014 tax against the base level amount and send the excess to the commonwealth in October 2015?

A: This is not covered by the statute. The local tax collector should develop a solution with the city within the confines of the CRIZ law. One option may be to monitor individual and employer accounts, and when the local tax collected exceeds the baseline, the local tax collector excludes the amount from the regular EIT distributions and holds for distribution to the commonwealth.

Q: Earned income tax collected from employers within the CRIZ is distributed to the resident municipality of the employee. In addition, the EIT collected from employees within the CRIZ, who are residents of the City, is split with the school district. What number is to be used for the baseline of EIT collected from employers within the CRIZ?

A:

The following EIT is included as CRIZ taxes:

1.
 - a. *EIT imposed by a city within which the CRIZ is located or*
 - b. *EIT imposed by a school district entirely within that city;*
2. *On income for work performed in the CRIZ by employees of a qualified business; and*
3. *By residents of the city or school district imposing the tax if the EIT is imposed based on residency.*

Q: After setting the baseline tax, should any collected delinquent taxes be considered when calculating the excess amount over the baseline or do we just use current year revenues?

A: Use the total amount of tax collected. Any tax collected during the prior calendar is calculated, whether delinquent or not, is to be included.

General Questions

Q: Can the "contracting authority" unilaterally designate the CRIZ area that results in a municipality and school district forgoing all of the local eligible taxes for up to 30 years?

A: Yes.

Q: Can industrial facilities be a part of a CRIZ and be funded with CRIZ funds?

A: By statute the local contracting authority is authorized to designate the geographic boundaries of the zone and administer the funding.

Q: The CRIZ program limits participation to cities with a population of at least 30,000. This appears arbitrary, and it is disappointing that a city like Coatesville (population approximately 13,000) is unable to utilize this economic development tool. Let's organize an effort to amend the legislation to reduce or eliminate the minimum population. Participation should be tied to economic indicators, not an arbitrary population figure.

A: CRIZ limitations are set in statute.

Q: While eligible communities are limited, isn't this a competitive program? Shouldn't there be some indication of what criteria will be used to make the selections?

A: CRIZ selection criteria are contained within the guidelines under Section III, CRIZ Designation Requirements, particularly subsections B and C.

Q: Coordination and cooperation are key. The other thing is using, to the degree possible existing economic development infrastructure (staff, organizations) already in place to pull this off. If not, you will add CRIZ Authorities to the ongoing list of economic development organizations that expect to be supported by the state in the future. The beauty of the KOZ program was that it overlaid existing plans and existing organizations – it did not require a separate entity or organization to run it. It was/is a tool, not an institution.

A: Contracting authority roles and responsibilities are addressed in the guidelines. However, the Municipality Authority Act also provides clarifying information:

The Municipality Authorities Act (53 Pa. C.S.A. § 5601 et seq.) specifies that the governing board of the municipality that creates an authority shall appoint at least five members of the authority. Each member to be appointed shall have residency, which is defined as someone who is a taxpayer in, maintains a business in or is a citizen of a municipality into which one or more of the projects of the authority extends or is to extend or to which one or more of the projects has been or is to be leased.

Q: Please advise whether an authority established under a statute other than the Municipal Authorities Act may act as the Contracting Authority or if it can be delegated or contracted to perform the duties and powers of the Contracting Authority.

A: Section 1801-C specifically provides that a Contracting Authority is an authority established under 53 Pa.C.S. Ch. 56. The guidelines provide that if an existing authority created pursuant to the Municipality Authorities Act (53 Pa. C.S.A. § 5601 et seq.) will be the Contracting Authority, an opinion of legal counsel must accompany the application for the designation of the CRIZ providing that the authority is a Contracting Authority with the purposes and powers required of Act 52 of 2013 (72 P.S. § 8801-C et seq.), which are not in conflict with any other purposes and powers of the existing authority. Section 1806-C sets forth the functions of the Contracting Authority and what it is empowered to do. An authority, other than one established under the Municipalities Authorities Act, may not act as a Contracting Authority, nor can it be delegated or contracted to perform the duties and powers of the Contracting Authority.

Q: Draft Business Plan - the municipality, or municipality in collaboration with a private-not-for profit economic development corporation currently existing and serving the area that includes the city, submits a draft business plan to DCED for preliminary approval. No use going to the expense of setting up an authority if what follows is no good. The draft business plan should identify the target CRIZ area, rationale for inclusion and also provide some detail on how the local CRIZ will function and handle annual as well as daily operations. This establishes a two-step process, but it also gives the commonwealth an understanding of what they may have to deal with.

A: The application serves as a business plan, as it outlines the feasibility of the zone, an analysis of tax revenues to be generated, jobs created/retained, the level of private sector investment, etc.

Q: In draft guidelines, “a CRIZ may not include Keystone Special Development Zones or Keystone Innovation Zones unless and until modifications to the geographical boundaries are made to the KSDZ or KIZ.” The boundary modification for KIZ and KSDZ parcel by DCED in a potential CRIZ application should be as follows: A KIZ partnership or KSDZ landowner will submit a letter requesting the appropriate boundary changes before the CRIZ application is submitted. The DCED will modify the geographic boundaries as requested by the KIZ Partnership or KSDZ landowner before the CRIZ application is submitted so that application conforms to guidelines. If the CRIZ is not approved, the KIZ Partnership or the KSDZ landowner would submit a new letter to DCED to re-amend their application and have those parcels that were taken out of the boundaries for the CRIZ application restored to their previous KIZ and KSDZ status.

A: Section II, F resolves this issue.

Q: Sales and Use Tax: Should the guidelines include Hotel Occupancy Tax?

A: Hotel occupancy tax is not one of the eligible taxes for CRIZ.

Q: Regional applications – can be apply on a regional basis?

A: Per statute, a CRIZ or pilot zone is an area of not more than 130 acres, comprised of parcels designated by the contracting authority, which will provide economic development and job creation within a city, borough or township as applicable and as defined in statute. Thus the focus is on the city, borough or township and not a regional application.

Q: Do applicants need cooperation letters with all landowners — should this be required?

A: No, this is not a requirement.

Q: Is land acquisition a permitted use of funds?

A: Yes.

Q: Definitions of EIT do not match: Section 10 c (4) does not match the statute definition of EIT in section 1802-C

A: Earned income tax imposed by a city or school district entirely within a city where a CRIZ is located and withheld from employees of a qualified business or construction contractor for work performed in the zone.

Q: If a business has an existing presence in the commonwealth and is seeking to expand into a CRIZ, is there any circumstance in which such expansion would be regarded as “new business” such that the eligible taxes paid by the business in the CRIZ will then not be included in the statutory baseline, but will be included in tax growth calculations?

A: Yes. If the business in the CRIZ is a new or separate legal entity from the business’s other Pennsylvania locations, the new entity in the CRIZ will be considered a new business and the business eligible taxes will not be included in the baseline.

Any business seeking to expand into the CRIZ that is not a new or separate legal entity from its other Pennsylvania location(s) shall be presumed to be a relocation and not a new business for purposes of baseline

calculation. To rebut this presumption, the business entering the CRIZ shall submit to the Department of Revenue (for joint consideration by the Department of Community and Economic Development, Department of Revenue, and the Office of the Budget) evidence of the following factors to demonstrate that the expansion is not merely a relocation of an existing business, but rather is a new business entitled to the deduction of business eligible taxes from the baseline.

Relevant factors to rebutting the presumption include, but are not limited to:

- 1. The number of new employees at the CRIZ location.*
- 2. Whether new furniture, fixtures and equipment is used at CRIZ location.*
- 3. The functions and operations of the CRIZ location.*
- 4. Whether the CRIZ location is generating new sales or business.*
- 5. Any other factors that may be significant on a case-by-case basis.*

Notice of the joint decision of the Departments of Budget, Revenue, and Community and Economic Development as to whether the presumption of relocation has been rebutted shall be provided to the business within thirty (30) days of the date all information necessary to render a final decision has been received by the Department of Revenue.

Q: Please confirm that Pennsylvania sales and use taxes on business personal property purchased outside the CRIZ for use in the CRIZ by a new business, and all construction materials purchased by a new or existing business outside the CRIZ for use in the CRIZ, are excluded from the baseline and therefore CRIZ eligible increment to the extent the tax is related to the activity of a qualified business.

A: Yes; the transaction on which the sales and use taxes are incurred or levied for construction materials purchased by a new or existing business outside the CRIZ for use in the CRIZ, and business personal property purchased outside the CRIZ for use in the CRIZ by a new business, does not have to occur in the CRIZ, nor do these taxes have to be paid or collected in the CRIZ.

Q: When we are calculating the baseline for a new business in the CRIZ, what goes into tax growth calculations?

A: Eligible CRIZ taxes paid by a new business for the first full calendar year in the CRIZ are that business's baseline amount. For subsequent calendar years, the amount of eligible CRIZ taxes paid by the new business minus the business's baseline amount shall be the amount transferred to the CRIZ Fund. Note that if it's a new business to PA, one relocating from outside the commonwealth, no taxes go into the baseline. If it's a business with locations within PA, one relocating a business in the CRIZ, all CRIZ taxes as defined in the guidelines go into the baseline for the first full calendar year.

Q: Seeking clarification of specific "sales" definition. — This will be important as it relates to anticipating Zone baseline capabilities and identifying prospective tenants for an application. Will this be defined by a qualified business that collects and submits the tax, or will this be defined in part by tax payers? Example: A retail store located in the zone accepts a phone order and direct ships an item to an address outside of the zone. Would this tax be applicable?

A: This is a CRIZ tax.

Q: A retail store located in the zone accepts an online order and direct ships an item to an address outside of the zone. Would this tax be applicable?

A: This is a CRIZ tax.

Q: A data center is seeking to open within the zone and assesses and collects sales tax from its customers from both within and outside of the zone. Would all sales taxes collected be applicable?

A: If all the data center does is accepts orders, forwards the orders, and the sales are shipped from a location not in the CRIZ, the sales tax collected is not CRIZ tax.

Q: Should a community be accepted for application, would bridge financing having taken place for public projects be acceptable as being repaid by the authority?

A: No, so long as the bridge financing occurred before the awarding of the CRIZ. Yes, if the bridge financing occurred after the awarding of the CRIZ.

Q: Can the guidelines be amended to amplify the broad powers of the Contracting Authority to make any manner of economic development incentives available to businesses in the CRIZ, including establishing low-interest revolving loan funds and providing gap financing?

A: Section 1813-C provides that the CRIZ funds may only be used for the following:

- (1) Payment of debt service on bonds issued for the construction, including related infrastructure and site preparation, reconstruction or renovation of a facility in the zone.*
- (2) Construction, including related infrastructure and site preparation, reconstruction or renovation of all or a part of a facility.*
- (3) Replenishment of amounts in debt service reserve funds established to pay debt service on bonds.*
- (4) Employment of an independent auditing firm to perform the duties under section 1807-C(c).*
- (5) Improvement or development of all or part of a zone.*
- (6) Improvement projects, including fixtures and equipment for a facility owned by a public authority.*

It will be for the Contracting Authority to determine how and by what means the CRIZ funds and bond proceeds are used in the CRIZ, in accordance with the statute.

Q: Do "prevailing wage" requirements apply to any private development in the CRIZ, even if that private development is aided by economic development funds sourced from the bond issue contemplated by the Act? Or, does "prevailing wage" only apply to the "construction, including related infrastructure and site preparation, reconstruction or renovation of all or a part of a facility?"

A: As to whether prevailing wages apply to private development in the CRIZ, including any construction, including related infrastructure and site preparation, reconstruction or renovation of all or a part of a facility, this will depend upon how any CRIZ funds and bond proceeds are provided to the private developer, i.e., grant or loan, and what those funds are used for. Any construction projects undertaken by any public entity, including the contracting authority, will require prevailing wages.

Section 1802-C Definitions

Q: City Revitalization and Improvement Zone; Is 130 acre zone map to be derived by totaling acreage of Parcel Identification Numbers or is the Allentown map example to be used?

A: Total acreage and parcel numbers are needed.

Q: For instance, Allentown had a map that was 130 acres but only 80+ acres were developable (less infrastructure). Also, is it anticipated that infrastructure upgrades will be part of the 130 acre total, and if this is anticipated, how does one include this in a Zone map as it relates to capturing acreage?

A: If infrastructure upgrades are going to be using CRIZ monies, the geographical footprint of the infrastructure must be included in the acreage.

Q: Regarding infrastructure, is the requirement to submit infrastructural upgrades that are going to be using CRIZ monies burdensome due to inclusion of public roads and sidewalks?

A: Public infrastructure, such as roads and sidewalks, will not be included in the acreage calculation. The guidelines have been revised to state:

Section III B.) 7.: "The plan must designate the specific geographic area or areas of the CRIZ, including a GIS map of the zone with parcel numbers. Public infrastructure, such as roads and public sidewalks, will not be included in the acreage calculation.

Q: In submitting a CRIZ Zone application, it is critical to consider a baseline's capabilities. Therefore parameters of a tax collections' inclusion is imperative to be understood at the outset of establishing a zone. Below are examples of questions that require clarification prior to the drawing of a Zone.

Apportionment Worksheet: Confirm that apportionment worksheet will be same as NIZ apportionment worksheet definition.

A: No, only corporate net income tax, capital stock/foreign franchise tax, bank shares tax or business privilege tax may be apportioned using three-factor apportionment. All other taxes may not use apportionment and only those taxes related to activity in the CRIZ or withheld from employees for work performed in the CRIZ will be CRIZ monies.

Q: Please confirm that ALL Qualified Businesses will have to complete CRIZ apportionment worksheet regardless of whether they only have one location/and their sole location in the CRIZ.

1. Corporate Net Income Tax - legislation reads that it's subject to apportionment — please confirm.

A: Yes, if the business is both inside and outside the CRIZ.

2. Capital Stock and Franchise Tax - legislation reads that it's subject to apportionment — please confirm.

A: Yes, if the business is both inside and outside the CRIZ.

3. Bank Shares Tax - legislation reads that it's subject to apportionment — please confirm.

A: Yes, if the business is both inside and outside the CRIZ.

4. Sales and Use Tax (and Hotel Occupancy Tax?) as is defined in tax lit - legislation reads as it's NOT subject to apportionment — please confirm

A: Yes.

5. State Liquor, wine or malt or brewed beverages Taxes - legislation reads as if they are NOT subject to apportionment — please confirm.

A: Confirmed.

Q: With regard to liquor tax: business purchases from LCB (whether in CRIZ or not) and LCB remits to DOR. Business reports 18 percent liquor paid. What if an LCB store is in the CRIZ and there are restaurants in the CRIZ that buy their liquor from this LCB store, would it be double reporting if the LCB store and the restaurants reported the liquor tax paid? How would DOR interpret this?

A: Only sales tax, liquor tax and malt beverage tax on sales of liquor, wine or beer within the CRIZ may be included as a CRIZ tax.

Q: Please clarify what is meant by CRIZ taxes include taxes “on sales of liquor, wine or beer within the zone.”

LCB stores and beer distributors within the CRIZ report taxes on the sales of liquor or wine, malt or brewed beverages in the CRIZ. Appropriately-licensed qualified businesses, such as restaurants and taverns report taxes on the purchase of liquor, wine, malt and brewed beverages outside the zone, for resale in the zone. The taxes are limited to 18% Liquor Tax, Rate Volume Malt Beverage Tax and 6% Sales Tax. The CRIZ tax reports require an appropriately-licensed qualified business to use the formula provided by the Department of Revenue for the calculation of each tax type. The formulas will be available upon the release of the 2014/2015 CRIZ tax reports.

6. Personal Income Tax (Employer Withholding) - not subject to apportionment — please confirm.

A: Confirmed.

Q: Local Taxes - overall question: please clarify if and why any local taxes would be subject to apportionment.

A: Business privilege tax is subject to apportionment because it is included in statute.

Q: NOTE: Some municipalities could have shared arrangements with local taxes.

1. BPT - legislation notes that this is subject to apportionment — please confirm. Does this make sense to have one local tax be subject to apportionment and the others not?

A: This is provided in the statute.

- a. How will the local taxing authority manage this?

A: This is a question for the local contracting authority.

- b. Use state apportionment worksheet just for this tax?

A: The business would use three-factor apportionment for this tax.

- c. Business License fee not included in legislation though this license fee is considered a local tax and is included in the BPT form for collection for many local municipalities. As this fee is “baked in” to the BPT, what is the view of the collection of BPT as BLF is not a noted collectable in statute?

A: As business license fee is not includible in statute, it is not a CRIZ tax.

- d. What form will be used for the BPT?

A: It is assumed the local form now used still would be used with some modification to allow apportionment of the tax to the CRIZ. This is primarily a local issue.

Q: Amusement Tax - this does not seem to be subject to apportionment — please confirm.

A: Confirmed.

Q: Amusement Tax - clarify within definition: *only to the extent the tax is related to the activity of a qualified business within the zone.*

A: If the amusement tax is imposed on an activity in the CRIZ, the tax is CRIZ money.

Q: EIT - this does not seem to be subject to apportionment — please confirm.

A: Confirmed.

Q: LST - this does not seem to be subject to apportionment – please confirm.

A: Confirmed.

Section 1805-C Exclusions

Q: Seeking clarification on process for protecting all *applicants* so that a prelim decertification process is not finalized prior to approval, thereby putting in jeopardy the zone status of unsuccessful applicants.

A: Property on which CRIZ funds were not expended may be placed into CRIZ if equal acreage in the CRIZ on which CRIZ funds were not expended is swapped out of CRIZ. This may occur after decertification of KOZ, KOEZ, SDA and KOIZ. For KIZ and KSDZ, those zone boundaries may be modified to accomplish the swapping procedure.

Additional Questions

Q: For the purposes of the 5-to-1 match, what are approved uses of the matching dollar? Can the authority count towards the match the services rendered for legal costs from a contractor?

A: Section 1813-C(d)(1) would seem to require that the private money must be used for “construction, including related site preparation and infrastructure, reconstruction or renovation of facilities.”

Q: Could the guidelines clarify that the private match requirement can be made up of any funding that is not state funding, including federal or local grants or loans, including grants and loans from local economic development authorities and other entities, as well as from private individuals and business entities?

A: Section 1813-C (d) provides that the matching funds shall be “private money.” This does not include any local, state or federal public funds.

Q: Would the 5-to-1 matching funds apply if monies transferred from the fund held at the state to the contracting authority were used for debt service?

A: Yes, as long as the debt service is for the activities in the prior question.

Q: Seeking clarification of language in the guidelines around located or partially located in the zone for the definition of qualified business?

A: “A business located in a zone” means “a business whose only physical location is in the zone.” “A business partially located in a zone” means “a business with a physical location both in the zone and outside the zone.”