

Exempt Organizations: Sales and Purchases

Susan Combs, Texas Comptroller of Public Accounts

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Organizations that have applied for and received a letter of exemption from sales tax don't have to pay sales and use tax when they buy, lease or rent taxable items that are necessary to the organization's exempt function.

Applying for Exempt Status

Various types of organizations are exempt from paying sales tax, state hotel occupancy tax and, if incorporated, franchise tax. The exemptions vary, depending upon the type of organization.

An organization can apply for exemption by using the appropriate application form as shown below. Our *Guidelines to Texas Tax Exemptions* (96-1045) gives more details on the categories and the application process.

Charitable – form AP-205

Educational – form AP-207

Religious – form AP-209

To apply as **any other** exemption type, use form AP-204.

*** Please note:** Homeowners' Associations can apply for a franchise tax exemption by completing AP-206. However, to qualify for exemption from sales tax, a homeowners' association must also be a qualifying 501C organization.

What can an exempt organization buy tax-free?

Sales and Use Tax

Organizations that have applied for and received a letter of exemption from sales tax don't have to pay sales and use tax when they buy, lease or rent taxable items that are necessary to the organization's exempt function. An authorized agent or employee can make a tax-free purchase for an exempt organization

by giving the vendor a completed exemption certificate. No item purchased tax-free by an exempt organization can be used for the personal benefit of a private party or other individual.

When buying an item to be donated to an exempt organization, an individual can give the seller an exemption certificate in lieu of paying tax. If the individual uses the item before donating it, however, the exemption is lost and tax is due.


An employee of an exempt organization cannot claim an exemption when buying taxable items of a personal nature, even if the organization gives an allowance or reimbursement for such items. For example, meals, toiletries, clothing and laundry services are for personal use and are taxable.

Anyone traveling on official business for an exempt organization must pay sales tax on taxable purchases whether reimbursed per diem or for actual expenses incurred.

A sales tax exemption does not include taxes on the purchase, rental or use of motor vehicles.

A completed exemption certificate must be on the proper Comptroller form which can be found on the back page of this publication. Exemption certificates are available online at our Window on State Government Web site at <http://www.window.state.tx.us> or call the Comptroller's office toll free at (800) 252-5555 and ask for a copy of form 01-339.

For more information, visit our Web site www.window.state.tx.us. Receive tax help via e-mail at tax.help@cpa.state.tx.us.



Exempt Organizations: Sales and Purchases

The retailer must either collect tax or accept, in good faith, a completed exemption certificate.

A government entity's purchase voucher is sufficient proof of exempt status. Foreign governments and most states are not exempt from Texas sales tax.

Motor Vehicle Sales and Use Tax

There are very limited exemptions from motor vehicle sales tax. Certain nonprofit emergency medical service providers and volunteer fire departments can buy fire trucks and emergency medical response vehicles tax-free, and churches do not have to pay tax when they purchase vans and buses used to take persons to and from services. A qualifying organization can claim the exemption when applying for the vehicle's title and registration. Motor vehicle purchases by other nonprofit organizations are taxable.

Hotel Occupancy Tax

Organizations that have received a letter of exemption from the Comptroller as a charitable, religious or educational organization are exempt from the state hotel occupancy tax. These organizations must still pay any applicable local hotel taxes. To claim this exemption, present a *Texas Hotel Occupancy Tax Exemption Certificate* to the hotel at the time of registration. Effective October 1, 2003, the hotel may require a copy of your exemption letter or verification, such as a printout from the Comptroller's Web site, showing the organization is exempt from hotel tax. A hotel exemption certificate form can be found online at our Window on State Government Web site at <http://www.window.state.tx.us> or call the Comptroller's office toll free at (800) 252-5555 and ask for a copy of form 12-302.

Should an exempt organization making sales collect sales tax?

Generally, an exempt organization must get a sales tax permit and collect and remit sales tax on all items it sells. The exemptions provided to exempt organizations are for their purchases, not on their sales, but there are some exceptions.

Tax-Free Sales

Meals and Food Products

An exempt organization does not have to collect sales tax on meals and food products (including candy and soft drinks) if:

- sold by churches or at church functions conducted under authority of a particular church;
- sold or served by a public or private school, school district, student organization or parent-teacher association in an elementary or secondary school during the regular school day by agreement with proper school authorities; or
- sold by a member or a volunteer of a nonprofit organization devoted exclusively to education or to physical or religious training, or by a group associated with private or public elementary and secondary schools as part of an organization's fund-raising drive, when all net proceeds from the sale go to the organization for its exclusive use.

Note: Alcoholic beverages are not food products and are taxable. Sales of alcoholic beverages made by the holder of a mixed beverage permit are subject to the 14 percent mixed beverage gross receipts tax. Sales of beer and wine made by the holder of a beer and wine only permit are subject to sales tax.

Generally, an exempt organization must get a sales tax permit and collect and remit sales tax on all items it sells.

For more information, visit our Web site www.window.state.tx.us. Receive tax help via e-mail at tax.help@cpa.state.tx.us.

Exempt Organizations: Sales and Purchases

Annual Banquets and Suppers

All volunteer, nonprofit organizations can hold a tax-free annual banquet or other food sale provided the affair is not professionally catered; not held in a restaurant, hotel or similar place of business; not in competition with a retailer required to collect tax; and the food is prepared, served and sold by members of the organization. The exemption does not apply to the sale of alcoholic beverages.

Auctions, Rummage Sales and Other Fund Raisers

Each chapter of an organization qualifying for sales tax exemption under the religious, educational or charitable category, as well as organizations exempted from sales tax based on their IRS Section 501 (c)(3), (4), (8), (10) or (19) status, can hold two one-day, tax-free sales or auctions each calendar year. During each one-day sale, the organization does not need to collect sales tax. For purposes of the exemption, one day is counted as 24 consecutive hours. The exemption does not apply to items sold for more than \$5,000 unless the item is manufactured by the organization, or the item is donated to the organization and not sold back to the donor.

Youth athletic organizations, volunteer fire departments and chambers of commerce cannot hold tax-free sales.

College or university student organizations affiliated with an institution of higher education can hold a one-day, tax-free sale each month. The organization must have a primary purpose other than engaging in business or performing an activity designed

to make a profit, and the purpose of the sale must be to raise funds for the organization. The exemption does not apply to items sold for more than \$5,000 unless the item is manufactured by the organization, or the item is donated to the organization and not sold back to the donor.

Senior Citizens Groups

Nonprofit senior citizens groups (persons aged 65 years and older) do not have to collect or remit sales tax on the items they make and sell, provided they do not have more than four sales per year lasting a total of no more than 20 days.

Amusement Services

Nonprofit organizations (other than IRS 501(c)(7) organizations) do not have to collect sales tax when they provide amusements, so long as the proceeds do not go to the benefit of an individual except as part of a purely public charity. See subsection (g) of Rule 3.298, Amusement Services.

Membership Dues and Fees

Nonprofit groups' membership dues and fees are tax-exempt. The exemption does not apply to nonprofit country clubs and similar organizations that provide amusement services.

Publications

Periodicals and writings are tax exempt if published and distributed by a religious, philanthropic, charitable, historical, scientific or IRS 501(c)(3) organization. The exemption does not extend to materials published by educational organizations.

An employee of an exempt organization cannot claim an exemption when buying taxable items of a personal nature, even if the organization gives an allowance or reimbursement for such items.

For more information, visit our Web site www.window.state.tx.us. Receive tax help via e-mail at tax.help@cpa.state.tx.us.

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm or agency	
Address (Street & number, P.O. Box or Route number)	Phone (Area code and number)
City, State, ZIP code	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: _____


Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

 Purchaser	Title	Date
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do **not** send the completed certificate to the Comptroller of Public Accounts.

TEXAS SALES AND USE TAX RESALE CERTIFICATE

Name of purchaser, firm or agency as shown on permit	Phone (Area code and number)												
Address (Street & number, P.O. Box or Route number)													
City, State, ZIP code													
Texas Sales and Use Tax Permit Number (must contain 11 digits)													
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Out-of-state retailer's registration number or Federal Taxpayers Registry (RFC) number for retailers based in Mexico													
<table style="width: 100%; border: none;"> <tr> <td style="border: 1px solid black; width: 250px; height: 15px;"></td> <td style="padding-left: 10px;">(Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)</td> </tr> </table>			(Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)										
	(Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)												

I, the purchaser named above, claim the right to make a non-taxable purchase (for resale of the taxable items described below or on the attached order or invoice) from:

Seller: _____

Street address: _____

City, State, ZIP code: _____

Description of items to be purchased on the attached order or invoice:

Description of the type of business activity generally engaged in or type of items normally sold by the purchaser:

The taxable items described above, or on the attached order or invoice, will be resold, rented or leased by me within the geographical limits of the United States of America, its territories and possessions or within the geographical limits of the United Mexican States, in their present form or attached to other taxable items to be sold.

I understand that if I make any use of the items other than retention, demonstration or display while holding them for sale, lease or rental, I must pay sales tax on the items at the time of use based upon either the purchase price or the fair market rental value for the period of time used.

I understand that it is a criminal offense to give a resale certificate to the seller for taxable items that I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease or rental, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

Purchaser	Title	Date
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Go, Fight, Win... It's almost time for school fundraisers to begin!

Schools and school groups that sell taxable items must obtain a sales tax permit and collect and remit tax on all sales of taxable items unless the sales are otherwise tax-exempt. Tax exemptions are specific and based on a variety of reasons, conditions, and circumstances. Tax is due on any sale not covered by an exemption. The entity making the taxable sale is a retailer/seller and responsible for collecting and remitting the tax.

Organizations that qualify for an exemption under Section 151.310(a)(1) or (2) [e.g., religious, educational, and charitable organizations and organizations exempt under IRS Section 501 (c)(3), (4), (8), (10), or (19)] and their bona fide chapters can hold two tax-free sales or auctions during a calendar year. A day is considered a consecutive 24-hour period. See Tax Code Section 151.310(c), subsection (h) of Rule 3.322 on sales by exempt organizations, and Tax Publication 96-122.

Qualifying educational organizations include Texas school districts, individual public schools, and private schools that have received sales tax exemption as educational organizations from the Comptroller's office. A group of students can qualify as a bona fide chapter of the school if it is organized for some activity other than just to have a tax-free sale day. A qualifying group is one that is recognized by the school and elects officers and holds meetings. Examples of bona fide chapters include such groups as a Drama Club, Spanish Club, FFA, and Student Council, but not a specific class of instruction, such as the first period Journalism class or fifth period Algebra.

Non-student nonprofit organizations, such as PTAs/PTOs and booster clubs, can qualify for certain exemptions on their own.

- A PTA that is affiliated with the state or national PTA organization, or an independent PTA or PTO that has qualified with the Comptroller's office as an educational or 501(c)(3) organization, can hold two one-day tax-free sales or auctions each calendar year. To qualify for the tax-free sales days, a booster club must first obtain exempt status from the IRS. A booster club that gets a Section 501(c)(3) federal exemption should complete AP-204 and submit it with a copy of the IRS exemption letter to the Comptroller's office. After the Comptroller's office notifies the club of its exempt status, the club can hold two one-day, tax-free sales or auctions each calendar year.
 - The guidelines for applying for sales tax exemption are available online. For questions about applying for a sales tax exemption, call Tax Assistance Monday through Friday at 1-800-252-5555 during the hours of 7:30 AM to 5:30 PM Central Time or write to us at exempt.orgs@cpa.state.tx.us.
 - For information on how to apply for federal exemptions, contact the IRS at 1-877-829-5500 or online at <http://www.irs.gov/>.
- Tax Code sections 151.314(d)(1) for PTAs and PTOs and (e)(1) for booster clubs provide an exemption for fundraising food sales for groups associated with schools. Sales tax is not due on the sale of food, including meals, candy, and soft drinks, by a PTA/PTO or by a group (e.g., booster club) associated with a public or private elementary or secondary school when the sale is part of a fund-raising drive sponsored by the organization and all net proceeds go to the organization for its exclusive use. If the qualifying group is the "seller" of the food as part of its own fundraising drive, food sales are not taxable. To claim the exemption, the organization can give an exemption certificate in lieu of paying the tax citing the appropriate statutory exemption for fund-raising food sales by PTA/PTO organizations or by school associated groups/booster clubs. If the organization holds a sales tax permit, it can choose instead to issue a properly completed resale certificate. The exemption does not apply if the qualifying group is not the seller, and the for-profit entity making the sales must collect sales tax even if it donates the proceeds to a qualifying exempt organization.
- Section 151.3101 of the Tax Code provides for an exemption for the sale of an amusement service, such as admission to a school carnival, provided exclusively by a PTA or booster club. See Rule 3.298(g) on amusement services.

In some fundraising activities, the school, school group, PTA/PTO, booster club, or other exempt organization is merely acting as a sales representative for a retailer/seller, and sales tax is due. This is often the case for taxable items such as candy, gift-wrapping, Christmas ornaments, candles, and similar items. An exempt organization is not considered the seller if it receives a commission for the sales. Instead, the for-profit entity is the seller and, consequently, the tax-free sale provisions do not apply. The exempt organization should collect sales tax on the taxable sales and then forward the tax collected on the orders to the for-profit retailer, who reports and remits the tax.

Distinguishing Between an Exempt Organization as the Seller and the Agent for the Seller during Fundraising Sales

Generally, sales tax is due on the sale of tangible personal property and taxable services in Texas whether the seller is a for-profit business, sole proprietor or non-profit organization. The seller must obtain a sales tax permit and is responsible for collecting and remitting tax on all sales and services made by the seller unless the sales are otherwise tax exempt.

What sales are tax-exempt? Non-profit religious, educational and charitable organizations that have applied for and received sales tax exemptions, as well as organizations exempted from paying sales tax based on their Internal Revenue Code Section 501(c)(3), (4), (8), (10) or (19) exempt status, can hold two one-day, tax-free sales or auctions each calendar year. During each one-day sale, the organization does not need to collect sales tax. For purposes of the exemption, one day is counted as 24 consecutive hours, and a calendar year is the 12-month period from January through December. The exemption does not apply to items sold for more than \$5,000 unless the organization manufactured the item or the item is donated to the organization and not sold back to the donor. See Tax Code Section 151.310(c) and Comptroller Rule 3.322(h)(2).

When engaging in fundraising activities, an exempt organization needs to identify the seller of the taxable items in order to determine the responsibility for collecting any sales tax that is due.

In many instances, the exempt organization enters into contracts with private entities to sell taxable items. The exempt organization takes orders and collects the money on the sales. After the exempt organization retains its agreed commission, it forwards the sales proceeds to the actual seller of the goods. Under this type of agreement, the exempt organization is not the seller, but is merely acting as a sales agent or representative for the seller. The private entity is the seller and must collect and remit sales tax. This is often the case for items such as school pictures, books and gift wrap. In these situations the exempt organization cannot issue any certificate in lieu of paying tax because it is not the seller and the tax-free sale provisions discussed above do not apply. Sales tax is due from the purchaser (consumer), collected by the exempt organization (agent), forwarded to the retailer (seller) and reported by the retailer (seller) on the seller's sales tax return to the Comptroller. The exempt organization has no sales tax reporting requirement. Additionally, the tax is being paid by the consumer who is not a tax-exempt, non-profit organization.

Recent correspondence from both exempt organizations and retailers has raised questions about the "seller" versus "agent for the seller" for fundraising sales. The taxability in this area has not changed and was addressed in STAR documents [7701L0083E09](#), [9808714L](#), [9908642L](#), [200204940L](#) and [200704926L](#).

Here are some guidelines to determine when the exempt organization is the seller and not merely acting as an agent for a seller:

- The exempt organization is the seller when it purchases sales inventory from a retailer for a certain price (first transaction) and then resells the taxable items at its own profit or loss for a price the exempt organization determines (second transaction). The exempt organization assumes all responsibility and risk. See STAR documents [8609H0755E02](#) and [8609H0755C05](#).
- The exempt organization is the seller when it does not share or split the proceeds with the retailer/distributor or retain a "commission." See STAR document [200209453L](#).

Whether the customer pays the exempt organization or the retailer is not always an indicator of who is considered the seller of the items. For example, a check could be made payable to the exempt organization, but if the exempt organization is receiving a commission from a retailer; the exempt organization is not the seller.

When the exempt organization is the seller, the sale could qualify as an exempt sale under the one-day tax-free sale provision.

The primary location of the exempt organization (such as the PTA, school, church or other non-profit organization) determines the local tax rate to be used to collect sales tax from customers. The local taxing jurisdictions are entitled to revenue from those sales since the fundraising, non-profit entity is operating a place of business, as that term is defined in Tax Code Section 321.002, on behalf of the seller for the purpose of receiving and filling orders.

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TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER O

STATE SALES AND USE TAX

RULE §3.281

Records Required; Information Required

(a) Persons who must keep records.

(1) Sellers of taxable items and purchasers who store, use, or consume taxable items in this state shall keep books, papers, and records in the form that the comptroller requires.

(2) Examples of persons who are required to keep records include the following:

(A) a person who sells, leases, or rents tangible personal property;

(B) a person who performs taxable labor, such as fabricating, processing, and producing tangible personal property;

(C) a person who performs taxable services that are listed in Tax Code, §151.0101; or

(D) a person who purchases taxable items.

(b) Records required.

(1) Records must reflect the total gross receipts from sales, rentals, leases, taxable services, and taxable labor. Examples include, but are not limited to, receipts, shipping manifests, invoices, and other pertinent papers from each rental, lease, taxable service, and each taxable labor transaction that occurs during each reporting period.

(2) Records must reflect total purchases of taxable items. Examples include, but are not limited to, receipts, shipping manifests, invoices, and other pertinent papers of all purchases of taxable items from every source that are made during each reporting period.

(3) Additional records must be kept to substantiate any claimed deductions or exclusions authorized by law. Examples include, but are not limited to, receipts, shipping manifests, invoices, exemption certificates, resale certificates, and other pertinent papers that substantiate each claimed deduction or exclusion.

(4) Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller may readily examine.

(c) Failure to keep accurate records. If a person who is required to keep records under subsection (a) of this section fails to keep accurate records of gross receipts, gross purchases, deductions, and exclusions, the comptroller may take actions that include, but are not limited to, the following:

(1) estimate the person's tax liability based on any available information that includes, but is not

limited to, records of suppliers;

(2) use a sample and projection auditing method to calculate the person's tax liability. For further information, see §3.282 of this title (relating to Auditing Taxpayer Records);

(3) suspend the person's permit;

(4) file criminal charges against a person who intentionally and knowingly alters or fails to keep records. For further information, see §3.305 of this title (relating to Criminal Offenses and Penalties); and

(5) take other action as authorized by law to enforce compliance with the Tax Code.

(d) Information required.

(1) The comptroller may require any person subject to the Limited Sales and Use Tax Act to furnish information necessary to:

(A) identify any person applying for a permit or any person required to file a return;

(B) determine the amount of bond required to commence or continue business;

(C) determine possible successor liability; and

(D) determine the amount of tax the person is required to remit.

(2) The information required may include, but is not limited to, the following:

(A) name of the actual owner of the business;

(B) name of each partner in a partnership;

(C) names of officers and directors of corporations and other organizations;

(D) all trade names under which the owner operates;

(E) mailing address and actual locations of all business outlets;

(F) license numbers, title numbers, and other identification of business vehicles;

(G) identification numbers assigned by other governmental agencies, including social security numbers, federal employers identification numbers, and drivers license numbers;

(H) names of suppliers, banks, and other persons with whom the taxpayer transacts business;

(I) names and last known addresses of former owners of the business.

(e) Retention. A person who is required to keep records under subsection (a) of this section must keep those records for a minimum of four years from the date on which the record is made, unless the

comptroller authorizes in writing a shorter retention period. A person must keep exemption and resale certificates for a minimum of four years following the completion of the last sale that is covered by the certificate.

(f) The comptroller or the comptroller's authorized representative may examine, copy, and photograph any records of any person who is required to keep records under subsection (a) of this section, to verify the accuracy of any return or to determine any tax liability. However, during an audit, an auditor for the comptroller should obtain permission from a taxpayer to copy or photograph records that are proprietary in nature, unless the comptroller reasonably believes that the taxpayer may have committed fraud or taken action to evade taxes. If the taxpayer does not grant the auditor permission to copy or photograph records, and the comptroller believes that the records are necessary to determine the tax liability of the taxpayer, then the comptroller may obtain records through other means under authority granted by Tax Code, §111.0043.

Source Note: The provisions of this §3.281 adopted to be effective January 1, 1976; amended to be effective October 30, 1984, 9 TexReg 5387; amended to be effective June 6, 2002, 27 TexReg 4727

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TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER 0

STATE SALES AND USE TAX

RULE §3.285

Resale Certificate; Sales for Resale (Tax Code, §§151.006, 151.054, 151.151, 151.152, 151.153, 151.154, 151.302,151.707)

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mexico--Within the geographical limits of the United Mexican States.

(2) Sale for resale--A sale of:

(A) tangible personal property to a purchaser who acquires the property for the purpose of reselling it in the United States or Mexico in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or as an integral part of other tangible personal property;

(B) tangible personal property to a purchaser who acquires the property for the sole purpose of leasing or renting it in the United States or Mexico to another person, but not if incidental to the leasing or renting of real estate;

(C) tangible personal property to a purchaser who acquires the property for the purpose of transferring care, custody, and control of the property to a customer in the United States or Mexico as an integral part of a taxable service;

(D) a taxable service to a purchaser who obtains the service for the purpose of reselling it in the United States or Mexico in the normal course of business as an integral part of a taxable service; or

(E) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service.

(3) United States--Within the geographical limits of the United States of America or within the territories and possessions of the United States of America.

(b) Acceptance of resale certificate.

(1) A sale for resale as defined in subsection (a)(2) of this section is not taxable. All gross receipts of a seller are subject to sales or use tax unless a properly completed resale or exemption certificate is accepted by the seller. A properly completed resale certificate contains the information required by subsection (g) of this section. See also §3.287 of this title (relating to Exemption Certificates).

(2) A sale is exempt if the resale certificate is accepted in good faith and the seller lacks actual knowledge that the sale is not a sale for resale. It is the seller's responsibility to take notice of the type business generally engaged in by the purchaser as shown on the resale certificate.

(3) A resale certificate may be signed by a purchaser at the time of purchase if the purchaser intends to resell, lease, or rent the taxable item or transfer it as an integral part of a taxable service in the regular course of business.

(4) The seller should obtain a properly executed resale certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(c) Blanket resale certificate. A blanket resale certificate describing the general nature of the taxable items purchased for resale may be issued to a seller by a purchaser who purchases only items for resale. The seller may rely on the blanket certificate until it is revoked in writing.

(d) Retailers outside Texas.

(1) A seller in Texas may accept a resale certificate in lieu of tax from a bona fide retailer located outside Texas who purchases taxable items for resale as defined in subsection (a) of this section.

(2) The resale certificate must show the signature and address of the purchaser, the state to which the property is taken for resale, the sales tax permit number, if any, or the registration number assigned to the purchaser by the purchaser's home state. Mexican retailers who purchase taxable items for resale must show their Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of their Mexican Registration Form to the Texas seller. An invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold must be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business. A resale certificate may be accepted from the bona fide out-of-state retailer even if the Texas retailer ships or delivers the taxable item directly to a recipient located inside Texas.

(3) The Texas retailer is not responsible for determining whether the out-of-state retailer is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(e) Improper use of items purchased for resale.

(1) When tangible personal property is removed from a valid tax-free inventory for use in Texas, Texas sales tax is due. Texas sales tax is not due on tangible personal property removed from a valid tax-free inventory for use outside the state. When tangible personal property or a taxable service purchased under a resale certificate is used for any purpose other than retention, demonstration, or display while holding it for sale, lease, or rental, or for transfer as an integral part of a taxable service,

the purchaser is liable for sales tax based on the value of the tangible personal property or taxable service for the period of time used.

(2) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(3) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(4) At any time the person using tangible personal property or a taxable service may stop paying tax on the value of tangible personal property or the value of a taxable service and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the original purchase price, credit will not be allowed for taxes previously paid based on value.

(5) A purchaser who gives a valid resale certificate for tangible personal property or a taxable service is not liable for sales tax on tangible personal property or a taxable service donated to an organization exempt under Tax Code, §151.309 or §151.310(a)(1) and (2), provided the purchaser does not use the donated tangible personal property or the donated taxable service.

(6) A purchaser who gives a resale certificate for the purchase of a taxable item is liable for sales tax if the purchaser uses the taxable item as a trade-in on the purchase of another taxable item. Tax must be paid on the original purchase price of the taxable item used as a trade-in.

(f) Improper use of a resale certificate.

(1) A person may not issue a resale certificate at the time of purchase for a taxable item if the person knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax is guilty of a criminal offense.

(A) If the tax evaded by the invalid certificate is less than \$20, the offense is a Class C misdemeanor.

(B) If the tax evaded by the invalid certificate is \$20 or more but less than \$200, the offense is a Class B misdemeanor.

(C) If the tax evaded by the invalid certificate is \$200 or more but less than \$750, the offense is a Class A misdemeanor.

(D) If the tax evaded by the invalid certificate is \$750 or more but less than \$20,000, the offense is a felony of the third degree.

(E) If the tax evaded by the invalid certificate is \$20,000 or more, the offense is a felony of the second degree.

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1, 2, or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale. See also subsection (d)(2) of this section regarding registration numbers for retailers outside Texas;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially either in the form of a Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate. The comptroller adopts both certificates by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 W. 6th Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)

Source Note: The provisions of this §3.285 adopted to be effective January 1, 1976; amended to be effective November 17, 1981, 6 TexReg 4064; amended to be effective November 19, 1984, 9 TexReg 5717; amended to be effective November 24, 1987, 12 TexReg 4196; amended to be effective September 18, 1991, 16 TexReg 4957; amended to be effective December 28, 1993, 18 TexReg 9311; amended to be effective March 12, 1996, 21 TexReg 1687; amended to be effective July 26, 1998, 23 TexReg 7381; amended to be effective October 12, 2004, 29 TexReg 9550

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<u>TITLE 34</u>	PUBLIC FINANCE
<u>PART 1</u>	COMPTROLLER OF PUBLIC ACCOUNTS
<u>CHAPTER 3</u>	TAX ADMINISTRATION
<u>SUBCHAPTER O</u>	STATE SALES AND USE TAX
<u>RULE §3.287</u>	Exemption Certificates

(a) Definition. Exemption certificate--A document that, when properly executed, allows the tax-free purchase of an item that would otherwise be subject to tax. A purchaser claiming an exemption because the item purchased is for resale must issue a resale certificate to the seller. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). There is no provision in the sales and use tax act for an exemption number or a tax exempt number to be issued or used in connection with an exemption certificate.

(b) Who may issue an exemption certificate. An exemption certificate of the type described in this section may only be issued by one of the following:

(1) an organization that has qualified for exemption under the Tax Code, §151.309 or §151.310. See §3.322 of this title (relating to Exempt Organizations);

(2) a person purchasing an item that is exempt under the Tax Code, Chapter 151, Subchapter H.

(c) Maquiladora exemption and direct payment permits.

(1) People who make purchases using direct pay permits should refer to §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(2) People who make purchases using maquiladora exemption permits should refer to §3.358 of this title (relating to Maquiladoras).

(d) Acceptance of exemption certificate.

(1) All gross receipts of a retailer are subject to sales or use tax unless a valid and properly completed exemption certificate is accepted by the seller.

(2) A sale is exempt if the exemption certificate is accepted in good faith at the time of the transaction and the seller lacks actual knowledge that the claimed exemption is invalid.

(3) A person who intentionally or knowingly makes, presents, uses, or alters an exemption certificate for the purpose of evading the Texas sales or use tax is guilty of a criminal offense.

(A) If the tax evaded by the invalid certificate is less than \$20, the offense is a Class C misdemeanor.

(B) If the tax evaded by the invalid certificate is \$20 or more but less than \$200, the offense is a Class B misdemeanor.

(C) If the tax evaded by the invalid certificate is \$200 or more but less than \$750, the offense is a

Class A misdemeanor.

(D) If the tax evaded by the invalid certificate is \$750 or more but less than \$20,000, the offense is a felony of the third degree.

(E) If the tax evaded by the invalid certificate is \$20,000 or more, the offense is a felony of the second degree.

(4) The seller should obtain the properly executed exemption certificate at the time the transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted.

(5) The exemption certificate will be valid if the seller received it in good faith from a purchaser and if the certificate states valid qualifications for an exemption. A retailer must be familiar with the exemptions that are available for the items the retailer sells. A retailer may accept a blanket exemption certificate given by a purchaser who purchases only items that are exempt. For information on blanket exemption certificates received for agricultural exemptions, see §3.296 of this title (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer).

(6) An exemption certificate is not acceptable when an exemption is claimed because tangible personal property is exported outside the United States. For proper documentation required for proof of export, see §3.323 of this title (relating to Imports and Exports) and §3.360 of this title (relating to Customs Brokers).

(e) Improper use of items purchased under an exemption certificate.

(1) When an item purchased under a valid exemption certificate is used in a taxable manner, whether the use is in Texas or outside the state, the purchaser is liable for payment of sales tax based on the value of the tangible personal property or taxable service for the period of time used. If the exemption certificate was invalid at the time of its issuance, the purchaser owes tax on the original purchase price.

(2) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(3) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(4) At any time the person using tangible personal property or a taxable service purchased under a valid exemption certificate may stop paying tax on the value of tangible personal property or the value of a taxable service and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid based on value.

(5) Sales tax is not due when an item purchased under a valid exemption certificate is donated to an organization exempt from tax under the Tax Code, §151.309 or §151.310(a)(1) or (2), provided the purchaser does not use the donated tangible personal property or the donated taxable service.

(6) Contractors using equipment purchased under a valid exemption certificate on both taxable and exempt projects must account for tax based upon the provisions in §3.291 of this title (relating to Contractors).

(f) Content of an exemption certificate. An exemption certificate must show:

- (1) the name and address of the purchaser;
- (2) a description of the item to be purchased;
- (3) the reason the purchase is exempt from tax;
- (4) the signature of the purchaser and the date; and
- (5) the name and address of the seller.

(g) Purchases of taxable items by agents of the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC). The FDIC or RTC may purchase items tax free for use in operating a property or business to which it has title. An exemption certificate may be issued by the FDIC or RTC or by persons acting as agents for the FDIC or RTC when purchasing items that are incorporated into or used on the property or business being managed. The certificate must state that the purchases are being made by or for the FDIC or RTC. The FDIC or RTC or persons managing property or a business for these corporations may issue an exemption certificate when:

- (1) the FDIC or RTC provides documentation to the person managing the property or business showing that title to the property or business being managed was transferred to the FDIC or RTC; and
- (2) the FDIC or RTC has entered into a written agreement with the person managing the property or business that designates that person as its agent and authorizes that person to make purchases on its behalf. The agreement must be in the person's files for review by the comptroller. It is not necessary to provide a copy of the agreement to suppliers.

(h) Form of an exemption certificate. An exemption certificate must be in substantially the form of a Texas Sales and Use Tax Exemption Certification that the comptroller adopts by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 West 6th Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621).

Source Note: The provisions of this §3.287 amended to be effective November 18, 1981, 6 TexReg 4064; amended to be effective November 19, 1984, 9 TexReg 5717; amended to be effective November 24, 1987, 12 TexReg 4198; amended to be effective February 19, 1990, 15 TexReg 657; amended to be effective September 10, 1991, 16 TexReg 4681; amended to be effective December 28, 1993, 18 TexReg 9312; amended to be effective February 7, 1996, 21 TexReg 599.

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TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER O

STATE SALES AND USE TAX

RULE §3.322

Exempt Organizations

(a) General policy. This section is administered using the following guiding principles:

(1) Because exemptions are not favored under the laws of the State of Texas, the provisions of this section shall be strictly interpreted.

(2) An organization must show by clear and convincing evidence that it meets the requirements of this section and the statutes. Any unresolved question about the qualifications of an organization will result in denial of exempt status.

(b) Entities that must prove exempt status. Entities or organizations that may qualify for exempt status include:

(1) a nonprofit charitable or eleemosynary organization that devotes all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, it cannot qualify for exemption under this provision because it is not organized for purely public charity. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the definition of charitable organization, even if the nonprofit organizations perform services that are often charitable in nature, are as follows: fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Although these organizations do not qualify for exemption as charitable organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the Internal Revenue Service (IRS) under the Internal Revenue Code (IRC), §501(c). Chambers of Commerce may qualify under paragraph (6) of this subsection;

(2) a nonprofit educational organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum that uses the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities that solely consist of presentation of discussion groups, forums, panels, lectures, or other similar programs, may qualify for the exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. An organization cannot qualify for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or

individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Although these organizations do not qualify for exemption as educational organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the IRC, §501(c);

(3) a nonprofit religious organization that is an organized group of people who regularly meet for the primary purpose of holding, conducting, and sponsoring religious worship services according to the rites of their sect. The organization must be able to provide evidence of an established congregation that shows regular attendance of these services by an organized group of people. An organization that supports or encourages religion as an incidental part of its overall purpose, or one whose general purpose is to further religious work or instill its membership with a religious understanding, cannot qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups that organize for the purpose of holding prayer meetings, Bible study, or revivals. Although these organizations do not qualify for exemption as religious organizations, they may qualify for an exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the IRC, §501(c);

(4) a youth athletic organization that is a nonprofit corporation or association that exclusively provides athletic competition among persons under 19 years of age;

(5) a nonprofit organization that applies for and obtains a determination letter or a group exemption ruling letter from the IRS that states that the organization qualifies for exemption from federal income tax under the IRC, §501(c)(3), (4), (8), (10), or (19);

(6) a nonprofit chamber of commerce that represents at least one Texas city, county, or geographic locality. For the purpose of this section, a chamber of commerce is a perpetual organization devoted exclusively to promoting the general economic interest of all commercial enterprises in the city, county, or areas it represents. The term does not include chamber-like organizations such as trade associations or business leagues that serve a single line or closely related lines of business within a single industry;

(7) a nonprofit convention and tourist promotional agency organized or sponsored by at least one Texas city or county;

(8) an electric cooperative formed under the Electric Cooperative Corporation Act (Utilities Code, Chapter 161) and nonprofit electric cooperatives located outside the state;

(9) a telephone cooperative formed under the Telephone Cooperative Act (Utilities Code, Chapter 162) and nonprofit telephone cooperatives located outside the state; and

(10) a local organizing committee that is exempt from federal income tax under the IRC, §501(c). The local organizing committee must be authorized by an endorsing municipality to pursue an application and submit a bid on the municipality's behalf to a site selection organization for selection as the host site of the 2007 Pan American Games or the 2012 Olympic Games.

(c) Entities always exempt. The following entities and organizations are exempt under the law and are not required to request and prove exempt status except to send information as requested by the comptroller to verify its exempt status under this subsection:

(1) the United States, its unincorporated agencies and instrumentalities;

(A) The United States includes all parts of the executive, legislative, and judicial branches and all independent boards, commissions, and agencies of the United States government.

(B) Instrumentalities and agencies of the United States include:

(i) various military entities under the supervision of a base commander;

(ii) organizations that contract with the United States and whose contracts explicitly and unequivocally state that they are agents of the United States;

(iii) organizations wholly owned by the United States or wholly owned by an organization that is itself wholly owned by the United States; and

(iv) organizations specifically named as agents of the United States or exempted as instrumentalities of the United States by federal statutes.

(C) Instrumentalities and agencies of the United States also include organizations having substantially all of the following characteristics:

(i) they are funded by the United States;

(ii) they carry out a specific program of the United States;

(iii) they are managed or controlled by officers of the United States;

(iv) their officers are appointed by the United States;

(v) they perform commitments of the United States under an international treaty; and

(vi) they are not organized for private profit.

(2) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States. "Wholly owned" means total or 100% ownership;

(3) federal credit unions organized under 12 United States Code, §1768;

(4) the State of Texas, its unincorporated agencies and instrumentalities;

(5) any county, city, special district or other political subdivision of the State of Texas, and any college or university created or authorized by the State of Texas;

(6) any company, department, or association organized for the purpose of answering fire alarms and

extinguishing fires or for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which receive nominal or no compensation for their services;

(7) nonprofit corporations formed under the Development Corporation Act of 1979 or the Health Facilities Development Act of 1981 when they purchase items for their exclusive use and benefit. The exemption does not apply to items purchased by the corporation to be lent, sold, leased, or rented. See §3.291 of this title (relating to Contractors); and

(8) nonprofit corporations established by the Texas National Research Laboratory Commission under Government Code, §465.008(g). Taxable items purchased or leased from these corporations are also exempt from tax if the items are used in or for carrying out an eligible undertaking as defined by Government Code, §465.021.

(d) Qualification requirements. To qualify for exempt status under subsection (b) of this section, an organization must satisfy all of the following requirements.

(1) An organization must be organized or formed solely to conduct one or more exempt activities. The Comptroller will consider all documents necessary to prove the purpose for which an organization is formed.

(2) An organization must devote its operations exclusively to one or more exempt activities.

(3) An organization must dedicate its assets in perpetuity to one or more exempt activities.

(4) No profit or gain may pass directly or indirectly to any private shareholder or individual. All salaries or other benefits furnished officers and employees must be commensurate with the services actually rendered.

(e) How to obtain exempt status.

(1) To apply for and obtain a letter of exemption from the comptroller, an organization must submit to the comptroller a written statement that details the nature of the activities conducted or to be conducted and the following documentation:

(A) a copy of the bylaws, a copy of its constitution, and a copy of any applicable trust agreement, and if the organization is a corporation, a copy of the articles of incorporation and any related amendments;

(B) if the claimed exemption is under §501(c)(3), (4), (8), (10), or (19) of the IRC, a copy of all pages of a determination letter or a group exemption ruling letter from the IRS. If the original determination letter or group exemption ruling letter is more than four years old, then the organization must send a copy of a recent letter from the IRS. A nonprofit organization that claims exemption under a parent's exemption must provide a copy of the parent organization's group exemption ruling letter from the IRS and a letter from the parent organization that states that the applicant nonprofit organization is a subordinate covered under the parent organization's group exemption.

(2) The comptroller may require an organization to furnish additional information to establish the claimed exemption. For example, the comptroller may request financial information and documentation that shows all services that the organization performs.

(3) After a review of the material, the comptroller will inform an organization in writing if it qualifies for exemption.

(4) The comptroller or an authorized representative of the comptroller may audit the records of an organization at any time during regular business hours to verify the validity of the organization's exempt status.

(f) Revocations, withdrawals, or loss of exemptions.

(1) Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt organization no longer qualifies for exemption, a comptroller's representative will notify the organization that its exempt status is under review. A comptroller's representative may request additional information that is necessary to ascertain the continued validity of the organization's exempt status. An organization must immediately notify the comptroller in writing of a revocation, withdrawal, or loss of exemption when the organization no longer qualifies for exemption. If the comptroller determines that an organization is no longer entitled to its exemption, then the comptroller will notify the organization. The date of the notification letter is the effective date of the revocation. All subsequent purchases are Cont'd...

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TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER O

STATE SALES AND USE TAX

RULE §3.322

Exempt Organizations

subject to tax.

(2) For nonprofit organizations that are granted an exemption under Tax Code, §151.310(a)(2), the revocation, withdrawal, or loss of the federal income tax exemption automatically terminates the sales tax exemption effective the earlier of the date on which the IRS serves formal written notice of the revocation on the nonprofit organization or the date on which the IRS notifies the comptroller.

(A) The effective date of a revocation for a nonprofit organization that was granted an exemption as a recognized subordinate is the date on which the organization ceased to be recognized as a subordinate under the federal group exemption. All subsequent purchases by the organization are subject to tax.

(B) The organization must notify the comptroller in writing of the revocation, withdrawal, or loss of exemption immediately upon receiving notice from the IRS of such revocation, withdrawal, or loss.

(C) Under a federal/state exchange agreement, the IRS may notify the comptroller when an organization no longer qualifies for federal exemption.

(3) An organization that loses its exempt status must immediately notify its suppliers that its purchases are subject to tax. Failure to so notify a supplier is a violation of the sales tax law.

(4) After revocation, the organization may re-apply for exempt status under other provisions of this section.

(g) Purchases by an exempt organization.

(1) The purchase, lease, or rental of a taxable item that relates to the purpose of an exempt organization listed in subsection (b)(1), (2), (3), or (5) of this section is exempt from tax when the organization or an authorized agent of the organization pays for the item and provides the vendor an exemption certificate in the form prescribed by the comptroller. See §3.287 of this title (relating to Exemption Certificates).

(2) The purchase, lease, or rental of a taxable item to an exempt organization listed in subsections (c) and (b)(4), (6), (7), (8), or (9) of this section is exempt from tax when the organization or an authorized agent pays for the taxable item and provides the vendor an exemption certificate in lieu of tax.

(3) A purchase voucher issued by any one of the entities identified in subsection (c) of this section is sufficient proof of the entity's exempt status.

(4) An exemption certificate must be given to a vendor when an authorized agent makes a cash purchase of merchandise for an exempt organization.

(5) An employee of an exempt organization cannot claim an exemption from tax when the employee purchases taxable items of a personal nature even though the employee receives an allowance or reimbursement from the organization.

(6) A person who travels on official business for an exempt organization must pay sales tax on taxable purchases whether reimbursed on a per diem basis or reimbursed for actual expenses incurred.

(h) Sales by an exempt organization.

(1) An exempt organization that sells taxable items must obtain a sales tax permit and is responsible for collection and remittance of tax on all sales of taxable items that the organization makes, unless such sales are otherwise exempt from the tax. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service), §3.299 of this title (relating to Newspapers, Magazines, Publishers, Exempt Writings), and §3.298 of this title (relating to Amusement Services).

(2) A religious, educational, charitable, eleemosynary organization, or an organization exempt under IRC, §501(c)(3), (4), (8), (10), or (19) and each of its bona fide chapters, may have two one-day tax-free sales or auctions each calendar year. During a tax-free sale or auction lasting only one day, the organization is not required to collect sales tax on the sales price of taxable items sold for \$5,000 or less. Additionally, a taxable item may be sold tax-free during a one-day tax-free sale or auction regardless of price if the item is manufactured by the organization or is donated to the organization and is not sold to the donor.

(A) One day is a consecutive 24-hour period. If a designated tax-free sale or auction exceeds a consecutive 24-hour period, the organization or chapter may not hold another tax-free sale or auction that calendar year. An organization or chapter may hold the two tax-free sales or auctions consecutively, but the two tax-free sales or auctions by that organization or chapter cannot exceed a maximum of 48 consecutive hours in a calendar year.

(B) The organization may employ an auctioneer to conduct the sale or auction and pay the auctioneer a reasonable fee not to exceed 20% of the gross receipts.

(C) If two or more exempt organizations or chapters jointly hold a tax-free sale or auction, each is considered to have held a tax-free sale or auction during that calendar year. Each exempt organization that participates in a joint tax-free sale or auction may hold one additional tax-free sale or auction during that calendar year.

(3) Sales by agencies and instrumentalities of the federal government are subject to tax, and the agencies and instrumentalities must collect and remit tax unless the collection of tax is specifically prohibited by federal law. If the collection is prohibited by specific federal law, the purchaser of the taxable item shall be liable for reporting the tax directly to the state.

(i) Organizations that do not qualify for exempt status. Examples of organizations that cannot qualify for exempt status include professional groups, certain mutual benefit or social groups, political, trade, business, bar, or medical associations. For information on exempt sales by senior citizens' organizations or exempt sales by student organizations affiliated with a college or university, see §3.316 of this title (relating to Occasional Sales and Other Tax-Free Sales).

(j) Consular officers, administrative, and technical employees.

(1) Foreign diplomatic personnel stationed in the United States are exempt from the payment of sales or use tax if they hold a photo-identification card issued by the United States Department of State. Cards are not transferable and may not be used by others, including spouses.

(2) Procedure for retailers.

(A) A retailer should retain a copy of the sales invoice or contract signed by the consular official that bears the consular exemption certificate number appearing on the back of the card.

(B) Certain cards are limited in what and how much may be purchased tax free. This information is contained on the card itself. Retailers who make sales to persons with cards that require purchases to exceed a certain dollar limit should include only those taxable items that are purchased in the same transaction to determine if the appropriate level has been reached. Purchases made in separate transactions may not be added together to reach minimum exemption levels.

(k) The Alabama-Coushatta, Kickapoo, and the Tigua Native American tribes.

(1) The purchase, lease, or rental of a taxable item to a tribal council or a business owned by a tribal council of these Native American tribes is exempt from sales tax. An exemption certificate or purchase order from the tribal council is sufficient proof of the exempt sale.

(2) Sales made by a tribal council or a business owned by a tribal council of these Native American tribes within the boundaries of the reservation are exempt from sales tax if:

(A) the taxable item being sold is made by a member of the tribe; and

(B) the taxable item is a cultural artifact of the tribe.

(3) Sales made off the reservation or sales made on the reservation of items that are not cultural artifacts are taxable.

(l) Bordering states and governmental units of states that border Texas.

(1) The State of Arkansas, State of Louisiana, State of New Mexico, State of Oklahoma, or a governmental unit of a state that borders Texas may qualify for exemption on the purchase, lease, or rental of taxable items, but only to the extent that the bordering state or governmental unit of a state that borders Texas exempts or does not impose a tax on similar sales of items to the State of Texas or a political subdivision of the State of Texas.

(2) A bordering state or a governmental unit of a state that borders Texas may enter into a reciprocal agreement with the comptroller for the exemption of taxable items purchased, leased or rented to the State of Texas or a political subdivision of the State of Texas.

(3) The purchase, lease, or rental of a taxable item to a bordering state or a governmental unit of a bordering state is exempt from sales tax to the extent allowed under the terms of the reciprocal agreement. An exemption certificate from a qualifying bordering state or a governmental unit of a bordering state is sufficient proof of the exempt sale.

Source Note: The provisions of this §3.322 adopted to be effective January 1, 1976; amended to be

effective October 10, 1976, 1 TexReg 2669; amended to be effective September 15, 1977, 2 TexReg 3392; amended to be effective November 17, 1981, 6 TexReg 4065; amended to be effective February 6, 1984, 9 TexReg 414; amended to be effective November 19, 1984, 9 TexReg 5717; amended to be effective June 18, 1986, 11 TexReg 2553; amended to be effective September 10, 1991, 16 TexReg 4681; amended to be effective September 19, 1996, 21 TexReg 8734; amended to be effective June 20, 2000, 25 TexReg 5915; amended to be effective December 2, 2002, 27 TexReg 11160

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TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER O

STATE SALES AND USE TAX

RULE §3.286

Seller's and Purchaser's Responsibilities

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Engaged in business--A retailer is engaged in business in Texas if the retailer:

(A) maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in this state under the authority of the seller to sell, deliver, or take orders for any taxable items;

(C) promotes a flea market, trade day, or other event that involves sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a rental or lease of tangible personal property that is located in this state;

(F) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax; or

(G) conducts business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller--For tax permit requirement purposes, the term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items. A warehouse, storage yard, or manufacturing plant is not a "place of business of the seller" for tax permit requirement purposes unless the seller receives three or more orders in a calendar year at the warehouse, storage yard, or manufacturing plant.

(3) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration. A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller and is responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless the participants hold active sales tax permits that the comptroller has issued. A direct sales organization that is engaged in business as defined in paragraph (1)(D) of this subsection is a seller and is responsible for the collection and remittance of the sales tax on all sales of taxable items by the independent salespersons who sell the organization's product. Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are also sellers. An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the

auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax. Auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(b) Permits required.

(1) Each seller must apply to the comptroller and obtain a tax permit for each place of business.

(2) Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a tax permit. An out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(3) Independent salespersons of direct sales organizations are not required to hold sales tax permits to sell taxable items for direct sales organizations. Direct sales organizations hold responsibility to maintain Texas permits and collect Texas tax on all sales of taxable items by their independent salespersons. See subsection (d)(6) of this section for collection and remittance of tax by direct sales organizations.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(c) To obtain a permit.

(1) A person must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A separate permit under the same account is issued to the applicant for each place of business. The permit is issued without charge.

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The permit cannot be transferred from one owner to another. The permit is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the permit. If a person operates two or more types of business at the same location, then only one permit is required.

(3) The permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling salesmen who operate from one central office needs only one permit, which must be displayed at the central office.

(4) All permits of the seller will have the same taxpayer number; however, each business location will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations owned by a taxpayer.

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053. Copies of the bracket system should be displayed in each place of

business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for \$.07, then the seller must collect the tax on the total sum of \$.14. Tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(6) Direct sales organizations must collect and remit tax from independent salespersons as follows.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after the customer's order has been taken, then the direct sales organization must collect and remit sales tax on the actual sales price of the taxable item.

(B) If an independent salesperson purchases a taxable item before the customer's order is taken, then the direct sales organization must collect and remit the tax from the salesperson based on the suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual price for which the item was sold to the salesperson at the tax rate that was in effect for the salesperson's location.

(7) A printer is a seller of printed materials and is required to collect tax on sales. However, a printer who is engaged in business in Texas is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both in Texas and outside of Texas; and

(C) the purchaser issues an exemption certificate that contains the statement that the printed materials

are for multistate use and the purchaser agrees to pay to Texas all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (f)(4) of this section for additional reporting requirements.

(e) Payment of the tax.

(1) Each seller, or purchaser who owes tax that was not collected by a seller, must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person who is subject to the tax shall file a consolidated return together with the tax payment for all businesses that operate under the same taxpayer number. Reports and payments that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(2) The returns must be signed by the person who is required to file the report or by the person's duly authorized agent, but need not be verified by oath.

(3) The returns must be filed on forms that the comptroller prescribes. The fact that the seller or purchaser does not receive the correct forms from the comptroller does not relieve the seller or purchaser of the responsibility to file a return and to pay the required tax.

(4) A seller or a purchaser who owes tax that was not collected by a seller, who remitted \$100,000 or more in sales and use tax to the comptroller during the preceding state fiscal year (September 1 through August 31) must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For further information about electronic filing of returns and payment of tax, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(5) A non-permitted purchaser who owes sales or use tax that was not collected by a seller must remit the tax to the comptroller on or before the 20th of the month following the month in which the taxable event occurs.

(f) Reporting period.

(1) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than \$1,500 in state tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31. The returns must be filed on or before the 20th day of the month following the period ending date.

(2) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than \$1,000 state tax to report during a calendar year may file yearly returns upon authorization from the comptroller.

(A) Authorization to file returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded \$1,000 in the prior calendar year.

(C) A taxpayer who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability is greater than \$1,000 during a calendar year. The taxpayer must file a return for that month or quarter, depending on the amount, in which the tax remittance or liability is greater than \$1,000. On that report, the taxpayer must report all taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, so long as the yearly tax liability is greater than \$1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly returns.

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TITLE 34**PUBLIC FINANCE****PART 1****COMPTROLLER OF PUBLIC ACCOUNTS****CHAPTER 3****TAX ADMINISTRATION****SUBCHAPTER O****STATE SALES AND USE TAX****RULE §3.286****Seller's and Purchaser's Responsibilities**

(F) Yearly filers must report on a calendar year basis. The return and payment are due on or before January 20 of the next calendar year.

(3) Sellers, and purchasers who owe tax that was not collected by sellers, who have \$1,500 or more in state tax per quarter to report must file monthly returns except for sellers who prepay the tax.

(4) A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(7) of this section must file a quarterly special use tax report with the comptroller on or before the last day of the month following the quarter. The special use tax report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(7) of this section.

(5) Each taxpayer who is required to file a city, county, special purpose district (SPD), or metropolitan transit authority/city transit department (MTA/CTD) sales and use tax return must file the return at the same time that the state sales and use tax return is filed.

(6) State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate tax return. A fully completed deposit request voucher is deemed to be the return filed by these agencies. Paragraphs (1)-(3) of this subsection do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(7) Retailers must report the total amount of sales tax refunded for sale of merchandise exported beyond the territorial limits of the United States and documented by licensed customs broker certifications under Tax Code, §151.307(b)(2). Retailers who refund tax on exports based on customs broker certifications must file the supplemental report on a form prescribed by the comptroller. Retailers file the supplemental reports at the same time and for the same reporting period as the retailer's state sales and use tax return.

(g) Filing the return; prepaying the tax; discounts; penalties.

(1) The comptroller makes forms available to all persons who are required to file returns. The failure of the taxpayer to obtain the forms does not relieve that taxpayer from the requirement to file and remit the tax timely. Each taxpayer may claim a discount for timely filing and payment as reimbursement for the expense of collection of the tax. The discount is equal to 0.5% of the amount of tax due. Certain sellers and purchasers are required to file returns and pay tax electronically, as provided in subsection (e)(4) of this section.

(2) The return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A taxpayer who makes a timely prepayment based upon a reasonable estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) On or before the 20th day of the month that follows the quarter or month for which a prepayment was made, the taxpayer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the taxpayer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the taxpayer will be mailed an overpayment notice or refund warrant.

(4) Remittances that are less than a reasonable estimate as required by paragraph (3) of this subsection are not regarded as prepayments. The 1.25% discount will not be allowed. If the taxpayer owes more than \$1,500 in a calendar quarter, the taxpayer is regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(5) If a taxpayer does not file a return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the Wall Street Journal on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(6) Permit holders are required to file sales and use tax returns. A permit holder must file a sales and use tax return even if the permit holder has no sales or tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of \$50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(h) Reports of sales to retailers by wholesalers and distributors of beer, wine and malt liquor. Pursuant to Tax Code, §151.433, each wholesaler or distributor of beer, wine, or malt liquor shall electronically file on or before the 25th day of each month a report of sales to retailers in this state. See §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(i) Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See §3.305 of this title.

(j) Resale and exemption certificates.

(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out-of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.

(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when

they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller of the seller's duty to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are subject to verification by the comptroller before any deductions are allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(k) Suspension of permit.

(1) If a person fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a seller's permit is suspended, the seller is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the seller at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

(3) After a permit has been suspended, a new permit will not be issued to the same seller until the seller has posted sufficient security and satisfied the comptroller that the seller will comply with both the provisions of the law and the comptroller's rules and regulations.

(4) A person who operates a business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.

(l) Refusal to issue permit. The comptroller is required by Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(m) Cancellation of sales tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the permit, and the

comptroller may cancel the permit. "No Business Activity" means zero total sales, zero taxable sales, and zero taxable purchases.

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TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

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Seller's and Purchaser's Responsibilities

(2) Re-application. If a permit is cancelled, the person may reapply and obtain a new sales tax permit upon request provided the issuance is not prohibited by subsection (k)(1) or (2) of this section, or by Tax Code, §111.0046.

(n) Direct payment. Yearly and quarterly filing requirements, prepayment procedures and discounts for timely filing do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.

(o) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(p) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title.

Source Note: The provisions of this §3.286 adopted to be effective December 12, 1996, 21 TexReg 11800; amended to be effective September 25, 2002, 27 TexReg 8952; amended to be effective April 13, 2005, 30 TexReg 2078; amended to be effective December 2, 2007, 32 TexReg 8521

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