

STATE OF TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS
STATE SALES AND USE TAX

Section 3.298. Amusement Services.

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Amusement services - Entertainment, recreation, sport, pastime, diversion, or enjoyment that is a pleasurable occupation of the senses. Amusement services and places that offer amusement services include, but are not limited to, the following:
- (A) live or recorded performances, whether by individual ticket or by season tickets:
- (i) ballet performances;
 - (ii) circuses;
 - (iii) ice skating shows;
 - (iv) motion pictures;
 - (v) musical concerts;
 - (vi) opera performances;
 - (vii) outdoor theatres; and
 - (viii) theatres (movies and plays);
- (B) exhibitions or displays:
- (i) animal shows (contests, exhibitions);
 - (ii) antique shows;
 - (iii) aquatic shows;
 - (iv) arts and crafts, and art shows (fairs);

- (v) auto shows;
 - (vi) museums (that display art objects, wax figures, antique autos, etc.); and
 - (vii) zoos;
- (C) spectator sports:
- (i) drag strip operation;
 - (ii) horse shows (horse riding exhibitions);
 - (iii) motorcycle races;
 - (iv) automobile races (full size and miniature cars);
 - (v) rodeo;
 - (vi) sporting events such as football, baseball, basketball, hockey, and soccer games; and
 - (vii) wrestling, boxing, or arm wrestling;
- (D) participatory sports or games:
- (i) athletic clubs;
 - (ii) bowling games;
 - (iii) court fees - tennis, racketball, handball, etc.;
 - (iv) domino games (including by the hour);
 - (v) go-cart raceways;
 - (vi) golf courses;
 - (vii) golf driving ranges;
 - (viii) health clubs (spas), (admissions and memberships);
 - (ix) miniature golf courses;

- (x) chartered boat or party boat excursions (see paragraph (2) of this subsection for excursions of more than one day duration, and for excursions on which fishing guide services are provided);
 - (xi) pool (billiards) games (by the game or by the hour);
 - (xii) skate board tracks;
 - (xiii) skating rinks (roller skating and ice skating);
 - (xiv) swimming pools;
 - (xv) water slides; and
 - (xvi) physical fitness centers;
- (E) fairs or carnivals:
- (i) amusement parks;
 - (ii) carnivals;
 - (iii) fairs;
 - (iv) games of skill, at a circus, carnival, etc.;
 - (v) shooting galleries (ranges); and
 - (vi) side shows;
- (F) other:
- (i) except as provided by subsection (e)(4) of this section, cover charges (for admission to night clubs, dance halls, discos, etc., that provide dancing, music, or other entertainment);
 - (ii) hot tub concessions;
 - (iii) parties (New Year's Eve) that radio stations, hotels, etc., sponsor. Ticket price includes meal, set-ups, entertainment, party favors;
 - (iv) rides for pleasure (in hot-air balloons, helicopters, trains, ships, boats, etc.);

- (v) tour trains and buses, whose primary purpose is to show tourist sights along a route, as opposed to regular transportation;
 - (vi) tours of tourist attractions, including ships, buildings, monuments, and natural wonders such as caves and caverns; and
 - (vii) palm reading, fortune telling, and astrological chart preparation;
- (G) country clubs and other private clubs and organizations that provide entertainment, recreation, sports, dining, or social facilities to members.
- (2) Nonamusement services - Activities that are primarily instructional in nature, or nontaxable personal services. Places, services, and clubs that the tax on amusement services does not cover include, but are not limited to:
- (A) hobby clubs (stamp collecting clubs, toastmaster clubs, camera clubs, amateur radio clubs);
 - (B) instructions for any sport or musical discipline;
 - (C) camps for children (day camps or boarding camps);
 - (D) video cassette clubs;
 - (E) political fundraisers;
 - (F) campground admissions;
 - (G) cruises that last longer than 24 hours and extend offshore beyond Texas territorial limits;
 - (H) fishing and hunting leases and guide services; and
 - (I) membership in sororities and fraternities.
- (3) Occasional sale - The sale of not more than 10 admissions for amusement services during a 12-month period by a person who does not hold himself out as engaging, or does not habitually engage, in the sale of amusement services.
- (4) Provider of an amusement service - The person who has legal rights of ownership over, or the legal right to provide, present, or offer, an amusement, entertainment, or recreation that is rendered on a regular basis at a fixed location, and for which admissions are sold, such as the owner of the wax figure display at a wax museum. The provider of an amusement service is also the person who has legal rights of ownership to an amusement, entertainment, or recreation that will not be rendered

on a regular basis at a fixed location, and for which amusement service admissions will be sold, such as the provider of a singer's one-night live performance. A provider of an amusement service may be, but is not always, the owner of the facility (land and/or building) at which the amusement service is offered or performed. A provider of an amusement service may gain the right of providing an amusement service by virtue of a contract or agreement (lease, rental, concession right) with the performer(s) of the entertainment, or with a facility owner when the use of that facility constitutes the amusement service. Terms used within the amusements industry to refer to a provider include manager, promoter, concessionaire, tenant, or association (or club) president.

- (5) Sales price of an amusement service - The fee charged for admission to an amusement, including a convenience fee, handling charge, service charge, or other amount that is over and above the amount that would be charged for an amusement admission at the ticket counter of the facility at which the amusement service will be rendered. Sales price also includes dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Receipts subject to tax under the Texas Alcoholic Beverage Code, sec. 202.02, are not included in the sales price of an amusement service.
- (6) Sales price of membership to country clubs, including clubs described by the Internal Revenue Code of 1986, sec. 501(c)(7) - The sales price includes dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Whether the club has its own facilities is irrelevant to the determination of sales price. Receipts subject to tax under Texas Alcoholic Beverage Code, sec. 202.02, are not included in the sales price of an amusement service.
- (7) Seller of admissions to amusement services - A person who sells more than 10 admissions to amusement services during a 12-month period, and includes those persons who hold themselves out as engaging, or who habitually engage, in the sale of admissions to amusement services.
- (8) Sale of an amusement service admission - The transfer of title to, or possession of, a ticket or other admission document for consideration, or the collection of an admission, membership, or enrollment fee, whether by individual performance, subscription series, or membership privilege, or through the use of a coin-operated or credit-card-operated machine. The consideration paid may secure the admission privilege for an individual or a group of individuals. The contract or agreement whereby the right is secured for a provider to offer an amusement, recreation, or entertainment as an amusement service is not the sale of an admission to an amusement service and is not subject to sales tax, such as the payment of a fee to a singer for a performance that the payer of the fee will provide as an amusement service through the sales of tickets.

- (b) Charges to private club members and guests. The membership dues, initiation fees, and other assessments and fees charged for a special privilege, status, or membership classification in a private club or organization, including organizations described by the Internal Revenue Code of 1986, sec. 501(c)(7), if the organizations provide amusements, are taxable. Taxable fees for special privileges in the organization include, but are not limited to, liquor pool dues, boat slip rental fees, golf cart storage fees, locker rental fees, locker room use fees, and fees for access to the restaurant and bar. Separate charges for amusement services by persons who operate clubs or other facilities over and above amounts that are received for membership or initiation fees, such as green fees or fees for admissions to swimming pools, racketball courts, or tennis courts, are also taxable. Initiation fees that are refundable, as evidenced by a written agreement, are not taxable.
- (c) Entry fees. Entry fees will not be taxable as amusements if:
 - (1) the fee substantially exceeds what would normally be paid for use of the facility, and a person is paying to compete in a contest, and part of the fee offsets the cost of conducting the contest and for prizes; or
 - (2) an individual would not normally use the facility or pay a fee, except for the purpose of participation in a contest.
- (d) Travel agencies.
 - (1) Tickets to amusements that travel agencies sell as part of a travel package are taxable only if:
 - (A) the price of the ticket is separately stated from the price for the remainder of the package; or
 - (B) though not separately stated, the surrounding additional costs are inconsequential.
 - (2) If the travel agency is not required to collect sales tax, then sales tax must be paid at the time the travel agency purchases the tickets.
- (e) Imposition of tax.
 - (1) Sales tax is due on the sale of an admission to an amusement service if the event or location of the service is within the State of Texas. Sales tax is also due on admissions to gambling ships that operate outside Texas waters, if the ships depart from and return to Texas ports. Sales tax is not due on the sale of an admission to an amusement service if the event or location of the service is outside Texas.

- (2) Use tax is due on an out-of-state sale of an admission to an amusement event that will take place in Texas.
 - (3) When a sale of an amusement service occurs that does not involve the transfer of a ticket or other physical evidence of admission, possession of or title to the admission is regarded as occurring at the seller's place of business. An example is when admission is secured by a reservation that the seller makes for the purchaser.
 - (4) Sales or use tax is not due on cover charges that are taxable under Alcoholic Beverage Code, sec. 202.02.
- (f) Taxable item sold or transferred with amusement service.
- (1) Sellers of service may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property is transferred to the client. For example, a taxpayer purchases padlocks to transfer to customers when lockers are rented. The padlock is transferred to customers, and the customers use the padlock when renting the locker. The taxpayer may purchase the padlock tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the padlock and for the services.
 - (2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service, and without which the taxable service could not be rendered.
 - (3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property that will be resold. If the entire service is not incorporated into the tangible personal property, the presumption is that the service is subject to tax, and the service will only be exempt to the extent that the buyer can establish the portion of the service that was actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.
 - (4) Any item, such as machinery or equipment, purchased for use in the provision of an amusement service is not an item that is transferred with an amusement service, and is subject to sales tax.
 - (5) A reseller of a ticket or admission document to an amusement service may deduct from "taxable sales reported," the "adjusted value" of the ticket or admission document purchased for resale from a non-permitted purchaser of the ticket or

admission document. The "adjusted value" is the face value of the ticket or admission document, less the included sales tax. A reseller is allowed the deduction from taxable sales when filing a sales tax report, if all of the following criteria are met:

- (A) the purchaser paid the sales tax, and the purchaser does not hold a Texas Sales and Use Tax Permit;
- (B) the language on the ticket or admission document purchased for resale states that all taxes have been included in the price of the ticket or admission document;
- (C) the ticket or admission document for which a deduction is claimed was not purchased tax-free by use of a resale or exemption certificate; and
- (D) the ticket or admission document is actually resold.

(g) Exemptions.

- (1) Sales tax is not due on the sale of an amusement service if the service is provided exclusively:
 - (A) by a nonprofit organization, corporation, or association, other than organizations described by the Internal Revenue Code of 1986, sec. 501(c)(7), if the proceeds do not go to the benefit of an individual, except as a part of the services of a purely public charity. Initiation and membership fees and other assorted fees charged by such a nonprofit organization, corporation, or association are not taxable. Examples include organizations, corporations, or associations recognized as nonprofit organizations under the Internal Revenue Code, sec. 501(c); Kiwanis clubs, labor unions, and ex-students organizations. Organizations described by the Internal Revenue Code of 1986, sec. 501(c)(7), that provide amusements, do not qualify for this exemption, even though such groups are formed as nonprofit organizations;
 - (B) by a nonprofit corporation organized under the laws of this state for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions;
 - (C) by an educational (including institutions of higher education as defined under Education Code, sec. 61.003(8)), religious, law enforcement, or charitable association or organization, as long as no part of the proceeds goes to the benefit of a private individual;
 - (D) by the United States, the State of Texas, a municipality, county, school district, special district, or other political subdivision of the State of Texas,

other than a public institution of higher education as defined under Education Code, sec. 61.003(8). An amusement service is not "exclusively provided" by a governmental entity if the entity contracts with an entity that is not listed in the Tax Code, sec. 151.3101(a)(1), for the provision of the amusement;

- (E) in a place that is included in the National Register of Historic Places; or
 - (F) in a place that is designated as a Recorded Texas Historic Landmark by the Texas Historical Commission.
- (2) Sales tax is not due on the sale of an amusement service by a ticket service, ticket agent, ticket outlet, or any other seller of amusement services, when the provider of the amusement service is exempt as set forth in paragraph (1) of this subsection.
- (3) Except as provided by subsection (h) of this section, a nonprofit group may hire a for-profit organization to provide the expertise to produce an event without loss of the exemption provided by paragraph (1)(A) of this subsection. The nonprofit organization must hold itself out as the provider of the amusement, and may not be a joint venturer with the for-profit entity.
- (4) Amusement services provided through coin-operated machines that the consumer operates are exempt from sales tax. The coin used to operate the machine may be a token as well as a United States coin. Examples are coin-operated:
- (A) pinball machines;
 - (B) video games and motion pictures;
 - (C) pool tables;
 - (D) televisions;
 - (E) shuffleboard;
 - (F) jukeboxes; and
 - (G) batting cages.
- (5) Sales tax is not due on the occasional sale of an amusement service.
- (6) Sales tax is not due on the purchase of an amusement service by an exempt entity for its own amusement or for the amusement of its members. See sec. 3.322 of this title (relating to Exempt Organizations). The seller must secure a valid exemption certificate. An amusement service is purchased for the amusement of its members irrespective of whether:

- (A) the organization pays the admission for the members;
 - (B) the members reimburse the exempt organization; or
 - (C) the members directly pay the service provider under an agreement by the provider to accept payments from individual members, the aggregate total of which equals the contractual obligation of the organization.
- (7) Sales tax is not due on the purchase of the admission to an activity that may be classified as an amusement, entertainment, or recreation, if purchased under a written prescription of a licensed practitioner of the healing arts for the primary purpose of health maintenance or improvement. The written prescription must specify the type of the treatment needed. If a membership privilege is purchased pursuant to a written prescription, a new prescription must be obtained each time the membership is renewed.
- (8) Except as provided under subsection (g)(1)(E) or (F) of this section, tax is due on an amusement service provided by an organization that is not exempted under subsection (g) or (h) of this section, when the facilities used to provide the amusement service are leased or rented from an organization that is exempted under subsection (g) or (h) of this section.
- (h) Governmental entities.
- (1) Entities recognized as governmental entities are subject to the provisions of this subsection even though the entities may also be classified under the Tax Code, sec. 151.3101(a)(3), (4), or (5).
- (2) Unless an event is solely for educational purposes, an amusement service provided by this state, an institution that this state owns or operates, an agency of this state, a city, county, school district, special district, or other political subdivision of this state, or any agency of the United States, is taxable if the public entity contracts with a person, a for-profit organization, or any other organization that is not listed in Tax Code, sec. 151.3101(a)(1), to provide the expertise to produce or provide a musical concert or other amusement event. These public entities must collect sales tax on admissions to amusement events that are provided by or in conjunction with a person, a for-profit organization, or other organization that is not listed in Tax Code, sec. 151.3101(a)(1). This provision does not apply to a public institution of higher education as defined under Education Code, sec. 61.003(8). Public institutions of higher education are included in the term "educational organizations" and are subject to the provisions of subsection (g)(1)(C) of this section.

(3) An amusement is not solely for educational purposes unless either 100% of the proceeds from the admissions go to the educational organization, or students at the educational institution actually perform the amusement.

(i) Collection of the tax.

(1) Persons who sell admissions to an amusement service for resale may accept a resale certificate from the purchaser of the amusement in lieu of tax. The resale certificate will cover all convenience fees, handling charges, service charges, etc., that promoters, ticket services, and others add to the sales price of the admission.

(2) Each seller of amusement services who sells to the final consumer must collect and remit the tax to the comptroller, based on the total receipts from all taxable sales. A seller is responsible for remitting the correct amount of tax based on the total sales price of admissions, including any charges that others have added.

(3) The comptroller may regard any seller of an admission to an amusement service as the agent of the person from whom he obtains the tickets or other admission document, if the comptroller determines that the tax will be collected more efficiently. The seller of an admission to amusement service is regarded as the agent if:

(A) the person who provides the tickets or other admission documents obtains written authorization from the comptroller to assume responsibility for the tax collection of the agent;

(B) the person who provides the tickets includes in the sales price of the admission any convenience fee, handling charge, etc., that the agent has added to the price; and

(C) the provider of the tickets gives to the seller/agent a written statement that the provider holds a tax permit issued by the comptroller and is assuming responsibility for tax collection and reporting for the agent.

(j) Records. Every seller of admissions to amusement services is responsible for keeping accurate records of all sales and purchases. See sec. 3.281 of this title (relating to Records Required; Information Required). Every seller of admissions to amusement services must hold a sales tax permit and must file reports as required by sec. 3.286 of this title (relating to Seller's and Purchaser's Responsibilities). A reseller of a ticket or admission document to an amusement service who deducts the "adjusted value" of the ticket or admission document purchased for resale from a non-permitted purchaser, as provided in subsection (f)(5) of this section, must have records that verify the deduction, including:

(1) the name and address of the non-permitted purchaser;

- (2) the face value of any ticket or admission document that a non-permitted purchaser has purchased;
 - (3) proof (such as a copy of the ticket or admission document) showing that sales tax is included in the price of the ticket or admission document;
 - (4) the sales of tickets or admission documents; and
 - (5) the remaining inventory of unsold tickets or admission documents.
- (k) Local tax. City, county, transit authority, and special purpose district tax should be allocated to the city, county, transit authority, and/or special purpose district where the amusement event occurred.

Effective Date: June 13, 2001

Filed with Secretary of State: May 24, 2001

CAROLE KEETON STRAYHORN
Comptroller of Public Accounts