

Fairs, Festivals, Markets and Shows

Susan Combs, Texas Comptroller of Public Accounts

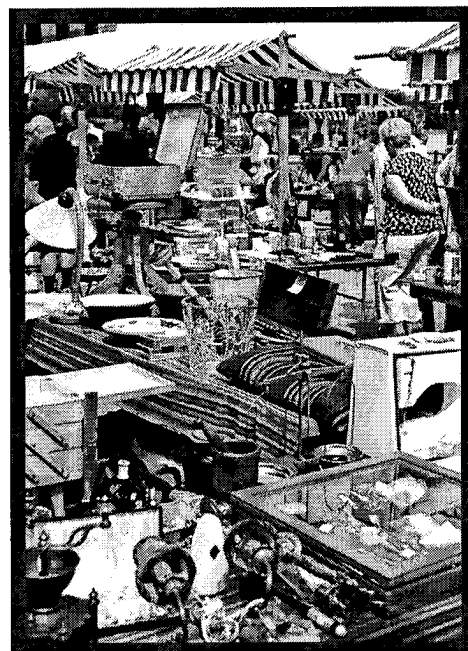
FEBRUARY 2013

Apply for a Texas
Sales and Use Tax
Permit online at
www.window.state.tx.us/taxpermit/.

Trade shows, arts and crafts shows, antique markets, gun shows and other types of markets, shows, fairs and festivals (including flea markets and swap meets) are considered temporary places of business for Texas tax purposes. Depending on the structure of the business, you may have responsibility for both sales and use tax and franchise tax. This publication provides basic information on both taxes.

This means that sellers at these types of shows, including sellers from outside Texas, are engaged in business and they need a Texas Sales and Use Tax Permit if they:

- sell taxable items or taxable services; or
- take orders for taxable items or taxable services; or
- use the show to promote sales of taxable items or taxable services.



A “seller” is a retailer, wholesaler, distributor, manufacturer or other person who sells, leases, rents or transfers ownership of taxable items or taxable services for consideration. See Rule 3.286 related to seller’s and purchaser’s responsibilities.

Promoters of these events are considered sellers and must hold a Texas Sales and Use Tax Permit. Promoters are also responsible for collecting and remitting the sales tax that should be collected by dealers, salespersons or individuals at these events, unless those persons either hold active Texas Sales and Use Tax Permits or qualify for the occasional sale exemption. See the *Documentation Required for Certain Occasional Sales* section, below.

Applying for a Texas Sales and Use Tax Permit

Complete the Texas Online Tax Registration Application to get a sales tax permit. Applications and information on what is needed to apply for a Texas sales tax permit are available on our website at www.window.state.tx.us/taxpermit/. There is no fee for a permit. Please note that operating without a permit can be costly; the Comptroller may assess daily penalties for operating without a permit.

For more information,
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Use the seller's home address or principal place of business address when applying for a sales tax permit for a flea market, trade show or other temporary place of business.

Sales Tax Bond

Some persons, such as those with previous state tax delinquencies, must provide a bond to ensure that tax collected is remitted to the Comptroller. The Comptroller's office will notify the permit applicant if a bond is required. The requirement can be met by a surety bond; cash; a letter of assignment or a letter of credit from a bank, savings and loan or credit union. If all taxes are paid promptly, the Comptroller's office will return the bond in two years.

Texas Tax Rates

The Texas state sales and use tax rate is 6.25 percent. Cities, counties, special purpose districts and transit authorities may adopt local sales and use taxes of up to 2 percent that businesses collect along with the state sales or use tax. The total rate of tax collected cannot exceed 8.25 percent on the sale of a taxable item or taxable service.

Collecting State and Local Sales and Use Taxes

A seller must collect sales or use tax on the total sales price of taxable items or taxable services. The invoice must separately state the tax or clearly indicate the tax is included in the sales price.

Vendors who sell at different events in different cities or counties must collect tax based on the location of each event.

Tax rates are available on our website at

<https://ourcpa.cpa.state.tx.us/atj/addresslookup.jsp>.

For more information, see our *Guidelines for Collecting Local Sales and Use Tax* at www.window.state.tx.us/taxinfo/taxpubs/tx94_105.pdf.

Sales for Resale and Exempt Sales

A person who holds a sales tax permit can purchase items tax free that they will resell in the regular course of business. The purchaser should issue a properly completed Texas Resale Certificate (Form 01-339) to the seller. See Comptroller Rule 3.285(a)(2).

For more information, see *Exempt Organizations – Sales and Purchases* (Pub. 96-122) at www.window.state.tx.us/taxinfo/taxpubs/tx96_122.pdf.

Reporting Sales and Use Tax

Persons holding a Texas Sales and Use Tax Permit must file a Texas Sales and Use Tax Return even if no tax is due or no sales are made.

Depending on the amount of tax collected, a seller may file monthly, quarterly or yearly. Returns and payments are due by the 20th day of the month following the report period. For example, the return for the first quarter (January, February and March) is due April 20.

A taxpayer who files the report and pays the tax on time is allowed a timely filing discount of one-half of one percent of the tax due.

For more information, visit our website www.window.state.tx.us. Receive tax help at <https://www.window.state.tx.us/taxhelp/>.

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Filing the return and paying the tax on time entitles the taxpayer to a timely filing discount equal to one-half percent of the tax collected as compensation.

A \$50 late filing penalty is assessed on every report filed after the due date. The \$50 penalty is due in addition to any other penalties assessed for the reporting period.

Companies can file online at www.window.state.tx.us/webfile/ or download paper returns at www.window.state.tx.us/taxinfo/taxforms/01-forms.html#Sales.

Sellers from Outside Texas Operating in Texas

Out-of-state sellers engaged in business here must have a sales and use tax permit. These sellers are responsible for collecting Texas use tax on sales made in Texas for 12 months after they are no longer engaged in business here. They must also collect and report all applicable taxes for local Texas taxing jurisdictions. Twelve months after the company is no longer engaged in business in Texas, the company can close its sales tax permit at www.cpa.state.tx.us/accmaint/close.html.

Admissions, Booth Rentals and Parking Fees

Admission fees are subject to sales tax. The event promoter must collect sales tax on admission fees.

Booth fees, floor space fees and rental charges for selling/display space, by whatever name, are not subject to sales tax.

Parking fees are subject to sales tax. The entity operating the parking facility must collect sales tax on parking fees. The amount of the sales tax must be separately stated on the customer's bill, or there must be a written statement to the customer that sales tax is included in the sales price.

Antique or Craft Malls and Markets

For malls and markets where vendors rent space to sell, buy or trade their wares, the method of sales tax collection depends on the type of check-out system.

Centralized cash register: If the market or mall has a centralized cash register or check-out, both the market itself and the individual sellers must have sales tax permits. The market or mall is responsible for collecting and remitting sales tax.

The market reports total sales, taxable sales and total tax collected for all vendors.

Vendors report the amount the market sells on their behalf only in the Total Sales field of the sales and use tax return. For example, a vendor receives \$400 from the market or mall for sales for the month. The vendor would report the \$400 as total sales, but would not include the \$400 in taxable sales.

No centralized cash register: If the market or mall does not have a centralized cash register or check-out, both the market itself and the individual sellers must have sales tax permits and are responsible for collecting and remitting sales tax on the sales they make.

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The market's promoter may be held liable for taxes on sales made by vendors without a permit, so the promoter should ensure that each vendor has an active sales tax permit.

Vendors should report total sales, taxable sales and the tax collected. The market should report total sales, taxable sales and the tax collected for any vendors operating without a sales tax permit.

Occasional Sales

Some individuals selling personal items may qualify for the "occasional sale" exemption. Individuals who make only occasional sales are not required to hold a sales tax permit or to collect tax on their sales of qualifying items.

The occasional sale exemption does **not** apply to individuals who:

- have, or are required to have, a Texas Sales and Use Tax Permit (or a similar permit from another state);
- are engaged in the business of making taxable sales (including artist or craftsmen who fabricate items for sale); or
- buy or otherwise obtain (including barter or trades) goods from others to resell them.

A person engaged in the business of making taxable sales may not claim an occasional sale exemption on the first two sales or on the first \$3,000 worth of taxable items sold in a calendar year.

Types of Occasional Sales

Use this chart to see if the occasional sale exemption applies:

If ...	and...	then ...
you have a sales tax permit	you sell taxable items	sales tax is due (unless another exemption applies to the sale).
you, as an individual or a business, do not have, and are not required to have, a sales tax permit	you make two or fewer sales per calendar year (regardless of the dollar amount of the sales)	• the \$3,000 limit does not apply and • you are not required to collect sales tax.
you are an individual who does not have, and is not required to have, a sales tax permit	• you sell taxable items during a calendar year that were originally bought for your personal use (or for use by a member of your family) and • the total amount of money received for those sales (no matter how many sales) does not exceed \$3,000 during that calendar year	you are not required to collect sales tax.

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Occasional Sale Exemption 1: Tax Code Section 151.304(b)(1) allows an individual who does not have, or is not required to have, a Texas Sales and Use Tax Permit (or a similar permit from another state) to sell one or two taxable items or taxable services (other than an amusement service) during any 12-month calendar year, regardless of the price of the items.

This exemption only applies to sales made by individuals, businesses and others who do not regularly sell taxable items (such as businesses who ordinarily sell nontaxable services).

Under this provision, the sales price of the items does not matter. For example, an individual can sell a piano for \$4,000 and a bicycle for \$200 at a garage sale in the same calendar year. If they later decide to sell their used lawnmower before the end of that calendar year, they are required to obtain a sales tax permit and collect sales tax because that would be a third sale.

Occasional Sale Exemption 2: Tax Code Section 151.304(b)(5) allows an individual who does not have, or is not required to have, a Texas Sales and Use Tax Permit (or a similar permit from another state) to have sales of up to \$3,000 in a calendar year of items that were originally acquired for personal use by the person or a family member of the person selling them. Under this provision, an individual can make as many sales as they like, as long as the items being sold were originally acquired for their personal use or their family's personal use, and they do not make more than \$3,000 on those sales during a calendar year.

For example, an individual may sell housewares at a garage sale in May and earn \$1,000. In August they sell their used bicycle to a neighbor for \$200. In December, they purchase admission to a gun show and sell a firearm to a vendor there for \$500. Those sales are more than two transactions in a calendar year, so the exemption provided by Section 151.304(b)(1) does not apply, but since the total amount earned from the sales was less than \$3,000 and all the items sold were originally purchased for the seller's or seller's family's personal use, the exemption provided by Section 151.304(b)(5) applies instead.

If an individual continues to sell taxable items after the \$3,000 limit is reached and has made more than two sales, they are considered engaged in business, and required to obtain a sales tax permit and must collect tax on all subsequent sales of taxable items, beginning with the first sale after the \$3,000 limit is reached.

This type of occasional sale exemption applies only to individuals. It does not apply to similar sales made by groups or organizations, such as student or church groups that collect items to sell at a garage-sale type event. Neither does the occasional sale exemption apply to "community-wide" type events that are coordinated or produced by a third party if the seller is required to pay a fee or commission in order to participate in the event (i.e., booth or space rental fees). In these situations, sales tax is required to be collected unless other exemptions apply.

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Documentation Required for Certain Occasional Sales

Sellers who qualify for the \$3,000 sales limit occasional sales tax exemption must give a letter to the promoter of the event with identifying information about the seller, including name, address, phone number and driver license.

The letter must specifically state the seller:

- is an individual selling their own previously taxed personal (used) property;
- is an individual who is not engaged in the business of selling taxable items; and
- has not earned more than \$3,000 from selling personal goods so far during the Calendar year.

Without this letter, the Comptroller's office will be unable to verify whether the seller was eligible to make tax-free occasional sales.

As with all exemptions, the seller is required to maintain records to document that the exemption applies.

Franchise Tax Responsibility

Entities engaged in business in Texas are subject to the state franchise tax. Limited exceptions to this rule include sole proprietorships.

A non-Texas entity may qualify for a franchise tax exemption if:

- its only activity in Texas is soliciting orders at trade shows;
- the entity makes no more than five visits to Texas during its accounting year; and
- each visit is not more than 120 consecutive hours.

Companies can establish the exemption with the Comptroller's office by completing a Texas Nexus Questionnaire (Form AP-114). The company must notify the Comptroller in writing when it no longer qualifies for the exemption.

For more information about the tax, see the *Franchise Tax Overview* at www.window.state.tx.us/taxinfo/taxpubs/tx98_806.html. For more information about the exemption, see Texas Tax Code Section 171.084 and Franchise Tax Rule 3.583.

Helpful Links and More Information

Apply for a sales tax permit at www.cpa.state.tx.us/taxpermit/.

Sales tax returns (Forms 01-114 and 01-116) are available at www.cpa.state.tx.us/taxinfo/taxforms/01-forms.html#Sales.

File a sales tax return and report sales and remit sales tax collected at www.window.state.tx.us/taxinfo/sales/webfile_sales.html.

Make account changes (address changes, close a sales tax permit) at www.window.state.tx.us/taxinfo/sales.

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visit our website
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Links to the Texas Tax Code and Comptroller rules are on our website at www.window.state.tx.us/taxes/.

- Tax Code Section 171.084 Franchise Tax Exemption for Trade Show Participants
- Rule 3.285 *Resale Certificate; Sales for Resale*
- Rule 3.286 *Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties*
- Rule 3.583 *Margin: Exemptions*

Publications

- *Guidelines for Collecting Local Sales and Use Tax* at www.window.state.tx.us/taxinfo/taxpubs/tx94_105.pdf
- *Exempt Organizations – Sales and Purchases* at www.window.state.tx.us/taxinfo/taxpubs/tx96_122.pdf

Disclaimer

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

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1-800-252-5555
911 Emergency Service/Equalization Surcharge
Automotive Oil Fee
Battery Fee
Boat and Boat Motor Sales Tax
Customs Broker
Fireworks Tax
Mixed Beverage Tax
Off-Road, Heavy-Duty Diesel Equipment Surcharge
Oyster Fee
Sales and Use Taxes
Telecommunications Infrastructure Fund

1-800-531-5441
Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

1-800-531-5441, ext. 3-3630
WebFile Help

1-800-252-1381
Bank Franchise
Franchise Tax

1-800-252-7875
Spanish

1-800-531-1441
Fax on Demand (Most frequently requested Sales and Franchise tax forms)

1-800-252-1382
Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge,
Rental and Seller-Financed Sales Tax
Motor Vehicle Registration Surcharge

1-800-252-1383
Fuels Tax
IFTA
LG Decals
Petroleum Products Delivery Fee
School Fund Benefit Fee

1-800-252-1384
Coastal Protection
Crude Oil Production Tax
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1-800-252-1387
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1-800-252-1385
Coin Operated Machine Tax
Hotel Occupancy Tax

1-800-252-1386
Certificates of Account Status/Good Standing
Officer and Director Information

1-800-862-2260
Cigarette and Tobacco

1-888-4-FILING (1-888-434-5464)
TELEFILE: To File by Phone

1-800-252-1389
GETPUB: To Order Forms and Publications

1-800-654-FIND (1-800-654-3463)
Treasury Find

1-800-321-2274
Unclaimed Property Claimants
Unclaimed Property Holders
Unclaimed Property Name Searches
512-463-3120 in Austin

1-877-44RATE4 (1-877-447-2834)
Interest Rate

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