

34 TX ADC § 3.286
 34 TAC § 3.286
 Tex. Admin. Code tit. 34, § 3.286

Page 1

C

TEXAS ADMINISTRATIVE CODE
TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC
ACCOUNTS
CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE
TAX

Current through December 31, 2003

§ 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

34 TX ADC § 3.286

34 TAC § 3.286

Tex. Admin. Code tit. 34, § 3.286

Page 2

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. 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 the 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 the 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.

34 TX ADC § 3.286
 34 TAC § 3.286
 Tex. Admin. Code tit. 34, § 3.286

Page 3

(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

34 TX ADC § 3.286
 34 TAC § 3.286
 Tex. Admin. Code tit. 34, § 3.286

Page 4

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.

(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.

(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.

34 TX ADC § 3.286

34 TAC § 3.286

Tex. Admin. Code tit. 34, § 3.286

Page 5

(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) 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.

(i) 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

34 TX ADC § 3.286

34 TAC § 3.286

Tex. Admin. Code tit. 34, § 3.286

Page 6

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).

(j) Suspension of permit.

(1) If a person fails to comply with any provision of the 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).

(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.

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

34 TX ADC § 3.286

34 TAC § 3.286

Tex. Admin. Code tit. 34, § 3.286

Page 7

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

amended to be effective September 25, 2002, 27 TexReg 8952.

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

34 TX ADC § 3.286
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(l) 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.

(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.

(m) 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.

(n) 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).

(o) 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: The provisions of this §3.286 adopted to be effective December 12, 1996, 21 TexReg 11800;

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