

C

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
TAX CODE

TITLE 2. STATE TAXATION**SUBTITLE E. SALES, EXCISE, AND USE TAXES****CHAPTER 151. LIMITED SALES, EXCISE, AND USE TAX****SUBCHAPTER C. IMPOSITION AND COLLECTION OF SALES TAX****§ 151.054. Gross Receipts Presumed Subject to Tax**

(a) Except as provided by Subsection (d) of this section, all gross receipts of a seller are presumed to have been subject to the sales tax unless a properly completed resale or exemption certificate is accepted by the seller.

(b) A sale is exempt if the seller receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate stating that the tangible personal property or service is acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

(c) A sale is exempt if the seller receives in good faith from a purchaser an exemption certificate stating qualifications for an exemption provided in Subchapter H of this chapter. [FN1]

(d) A sale of liquor, wine, beer, or malt liquor by the holder of a manufacturer's license, wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, or a general, local, or branch distributor's license issued under the Alcoholic Beverage Code to the holder of a retail license or permit issued under the Alcoholic Beverage Code is presumed to be a sale for resale. In a sale to which this section applies, the seller is not required to receive a resale certificate from the purchaser.

(e) Properly completed resale or exemption certificates should be in the possession of the seller at the time the nontaxable transaction occurs. If the seller is not in possession of these certificates within 60 days from the date written notice requiring possession of them is given to the seller by the comptroller, deductions claimed by the seller that require delivery of the certificates shall be disallowed. If the seller delivers the certificates to the comptroller within the 60-day period, the comptroller may verify the reason or basis for exemption claimed in the certificates before allowing any deductions. A deduction may not be granted on the basis of certificates delivered to the comptroller after the 60-day period.

CREDIT(S)

Acts 1981, 67th Leg., p. 1550, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 15, § 2, eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 206, § 6, eff. Oct. 1, 1985; Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 1, pt. 4, § 16.

[FN1] V.T.C.A., Tax Code § 151.301 et seq.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

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The 1984 amendment in subsec. (a), substituted "Subsection (d)" for "Subsections (b) and (c)" and "unless a resale or exemption certificate is accepted by the seller" for "until the contrary is established"; in subsec. (b) substituted "A sale is exempt if" for "The burden of showing that a sale of tangible personal property is a sale for resale is on the seller unless"; inserted a new subsec. (c); relettered former subsec. (c) as subsec. (d); and added subsec. (e).

The 1985 amendment, in subsec. (b), inserted "or service".

For provisions of the 1985 amendatory act relating to legislative findings and applicability, see notes following V.T.C.A., Tax Code § 151.008.

The 1987 amendment, in subsec. (a) following "sales tax unless a", inserted "properly completed" and, in subsec. (e) following "Properly", substituted "completed" for "executed", following "If the seller", substituted "delivers" for "acquires", following "the certificates", inserted "to the comptroller" and, following "basis of certificates", substituted "delivered to the comptroller" for "obtained".

For effective date of the 1987 amendatory act, see notes following V.T.C.A., Tax Code § 151.0028.

Prior Laws:

Acts 1955, 54th Leg., p. 1607, ch. 522, §§ 2, 5, 10.
Vernon's Ann.Civ.St. art. 70471-1, §§ 2(a) to (d), 5, 10.
Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, arts. 20.07, 20.11, 20.16.
Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1.
Acts 1963, 58th Leg., p. 371, ch. 138, § 1.
Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 15 to 22.
Acts 1973, 63rd Leg., p. 285, ch. 134, § 1.
Acts 1977, 65th Leg., p. 1656, ch. 652, § 1.
V.A.T.S. Tax.-Gen. art. 20.021, §§ (F), (G).

ADMINISTRATIVE CODE REFERENCES

Comptroller of Public Accounts, state sales and use tax, direct payment procedures and qualifications, see 34 TAC § 3.288.

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LIBRARY REFERENCES

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Taxation ⚡ 1232.5.
Westlaw Topic No. 371.
C.J.S. Taxation § 1233.

RESEARCH REFERENCES

2003 Electronic Update

Encyclopedias

TX Jur. 3d Taxation § 148, Generally.

TX Jur. 3d Taxation § 159, Generally.

TX Jur. 3d Taxation § 553, Sufficiency; Presumptions.

TX Jur. 3d Taxation IV D REF, Divisional References.

Treatises and Practice Aids

TX Practice Guide, Evidence CH 3 V, 3 V. Statutory Presumptions.

UNITED STATES SUPREME COURT

Carriers, sales tax imposed based upon percentage of gross income of business, see *Complete Auto Transit, Inc. v. Brady*, 1977, 97 S.Ct. 1076, 430 U.S. 274, 51 L.Ed.2d 326, rehearing denied 97 S.Ct. 1669, 430 U.S. 976, 52 L.Ed.2d 371.

NOTES OF DECISIONS

Motor vehicles 1

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1. Motor vehicles

Any transaction by an original manufacturer agreeing to give exclusive use of a motor vehicle to another for any period of time and for a consideration is to be taxed on the basis of the gross receipts from the transaction. Op. Atty. Gen. 1972, No. M-1223.

V. T. C. A., Tax Code § 151.054, TX TAX § 151.054

Current through end of 2003 Third Called Session

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