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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 H. EXEMPTIONS****§ 151.302. Sales for Resale**

- (a) The sale for resale of a taxable item is exempted from the taxes imposed by this chapter.
- (b) Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service.
- (c) Internal or external wrapping, packing, and packaging supplies used by a person in wrapping, packing, or packaging tangible personal property or in the performance of a service for the purpose of furthering the sale of the tangible personal property or the service may not be purchased by the person for resale.
- (d) In this section, "wrapping," "packing," and "packaging supplies" include:
- (1) wrapping paper, wrapping twine, bags, cartons, crates, crating material, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and
 - (2) excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay laths, and property used inside a package to shape, form, stabilize, preserve, or protect the contents.

CREDIT(S)

Acts 1981, 67th Leg., p. 1559, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 206, § 7, eff. Oct. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, § 14.06.

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

HISTORICAL AND STATUTORY NOTES

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The 1985 amendment added the second sentence.

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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 1991 amendment designated subsecs. (a) and (b), and added subsecs. (c) and (d).

Section 14.17 of the 1991 amendatory act provides:

"This article takes effect on the first day of the first calendar quarter beginning on or after the effective date of this Act."

Prior Laws:

Acts 1955, 54th Leg., p. 1607, ch. 522, § 2.
Vernon's Ann.Civ.St. art. 70471-1, § 2(a).
Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, arts. 20.02 to 20.05.
Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1.
Acts 1969, 61st Leg., p. 1522, ch. 458, § 2.
V.A.T.S. Tax.-Gen. art. 20.04, § (O)(1).

LIBRARY REFERENCES

2002 Main Volume

Taxation ↪ 1238, 1243.
Westlaw Topic No. 371.
C.J.S. Taxation §§ 1234, 1237.

RESEARCH REFERENCES

2003 Electronic Update

ALR Library

2000 ALR 5th 6, Cable Television Equipment Or Services As Subject To Sales Or Use Tax.

Encyclopedias

TX Jur. 3d Taxation § 159, Generally.

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

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Treatises and Practice Aids

15 Tex. Prac. Series § 3.98, State Tax Liens.

NOTES OF DECISIONS

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1. In general

Sales tax provision exempting "all sales for resale" extends to such sales whether purchase is for resale in or outside state, and applied to sales by sales company to purchaser who bought for resale in Mexico. *Schlusberg v. Calvert* (Sup. 1969) 443 S.W.2d 695. Taxation ⚡ 1238

Sales company which sold goods to purchaser, who purportedly bought for resale in Mexico, was entitled to exemption from sales tax under provision exempting all sales for resale despite any noncompliance by purchaser with export and import regulations. *Schlusberg v. Calvert* (Sup. 1969) 443 S.W.2d 695. Taxation ⚡ 1238

In view of distinct, identifiable transactions of sale between prime contractor and sellers, from whom prime contractor procured goods and services pursuant to its contract with government, and between prime contractor and government, purchases by prime contractor from sellers were not taxable, under the "Sale for Resale" exemption in V.A.T.S. Tax.-Gen. art. 20.04, § (O) (repealed). *Day & Zimmermann, Inc. v. Calvert* (Sup. 1975) 519 S.W.2d 106, certiorari denied 96 S.Ct. 54, 423 U.S. 832, 46 L.Ed.2d 50. Taxation ⚡ 1238

For purposes of requirement that transfer of "care, custody, and control" is prerequisite to triggering of "sale for resale" sales tax exemption, complete divestiture by owner of all rights in property is not required. *Sharp v. Clearview Cable TV, Inc.* (App. 3 Dist. 1998) 960 S.W.2d 424, rehearing overruled, review denied. Taxation ⚡ 1238

2. Purpose

"Sale for resale" sales tax exemption was put into Tax Code to prevent double taxation. *Sharp v. Clearview Cable TV, Inc.* (App. 3 Dist. 1998) 960 S.W.2d 424, rehearing overruled, review denied. Taxation ⚡ 1238

Purpose of sale-for-resale exemption regarding sales tax is to prevent double taxation. *Strayhorn v. Raytheon E-Systems, Inc.* (App. 3 Dist. 2003) 101 S.W.3d 558, rehearing overruled, review denied, rehearing of petition for

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review denied. Taxation ⚡ 1238

3. Transfer of control

Wireless cable television provider effectively transferred "care" and "control" of outside equipment (i.e., antenna, down converter, and connecting wire) to its subscribers, and thus, provider was entitled to benefit of "sale for resale" sales tax exemption for its purchases of that equipment; although provider and subscribers had some degree of joint care and control over equipment, subscriber primarily controlled it, as subscriber determined when equipment could be used, how long it could be used, and what, if any, programming would be received by antenna and converted into signal that could be received by subscriber's television set, and subscribers were contractually bound to "properly care" for equipment. *Sharp v. Clearview Cable TV, Inc.* (App. 3 Dist. 1998) 960 S.W.2d 424, rehearing overruled, review denied. Taxation ⚡ 1238

Sale-for-resale exemption to use tax applied regarding taxpayer that purchased overhead items that it allocated as indirect costs on multiple federal defense contracts, because taxpayer used items in course of performing government contracts, and title to items passed to federal government under terms of contracts. *Strayhorn v. Raytheon E-Systems, Inc.* (App. 3 Dist. 2003) 101 S.W.3d 558, rehearing overruled, review denied, rehearing of petition for review denied. Taxation ⚡ 1238

3.5. Transfer of title

Taxpayer that paid sales tax on purchase of overhead items that it allocated as indirect costs on multiple federal defense contracts was entitled to refund under sale-for-resale exemption, since title to overhead items passed to federal government under both fixed-price contracts and cost-type contracts, passage of title qualified as a sale, and taxpayer consumed items at issue in course of performing contracts. *Strayhorn v. Raytheon E-Systems, Inc.* (App. 3 Dist. 2003) 101 S.W.3d 558, rehearing overruled, review denied, rehearing of petition for review denied. Taxation ⚡ 1238

4. Consideration

With regard to statute, V.T.C.A., Tax Code § 151.302, providing that "sale for resale" of taxable item is exempted from use tax, there is no requirement that, in order for there to be "sale for resale," there must be consideration valued in money. *Bullock v. Cordovan Corp.* (App. 3 Dist. 1985) 697 S.W.2d 432, ref. n.r.e..

Publishing company's use of printing services and materials purchased from printing company in connection with publishing of "controlled circulation publications" was exempt from use tax under "sale for resale" exemption of V.T.C.A., Tax Code § 151.302, even though publications were distributed free of charge to readers, where distribution was to select group of readers and where advertisers payment of high rates for advertising was based on select distribution. *Bullock v. Cordovan Corp.* (App. 3 Dist. 1985) 697 S.W.2d 432, ref. n.r.e.. Taxation ⚡ 1238

5. Resale certificates

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Petitioner sold a variety of goods to a variety of purchasers. After an audit, Petitioner submitted further documentation to support claimed tax-free sales. Tax Division agreed to many deletions. In some, however, the only documentation was a copy of the customer's sales tax permit. Held: sales tax due on contested items. Petitioner apparently confused a resale certificate and a sales tax permit. They are not one and the same. All businesses make some taxable purchases for use in their operation, even if they also make tax-free purchases of inventory items that they intend to resell. Therefore, a copy of a sales tax permit shows nothing other than the customer has in fact applied for and received a permit. It does not show what the customer intends to do with the items purchased. A resale certificate is a customer's signed statement to a seller that the customer intends to resell the goods he purchases. Comptroller's Decision No. 15,812 (1985).

6. Leases

Where, in furnishing specialized fishing and rental tools, along with highly skilled operators thereof, to customers engaged in drilling and producing oil and natural gas, plaintiff was simply providing a service to its customers and, incidentally, using tools which it had leased from owners thereof, arrangement between plaintiff and its customers was not a lease and was not exempt from sales tax in that tools were not acquired for resale or for re-lease, but were possessed by plaintiff for its own ultimate use as an independent contractor in servicing customers in need of tools, men, and expertise possessed by plaintiff. *Davis-Kemp Tool Co., Inc. v. Bullock* (Civ.App. 1979) 584 S.W.2d 579, affirmed 590 S.W.2d 708. Taxation ⇨ 1238

Sale-for-resale exemption from use tax did not apply to taxpayer which purchased empty containers out of state, filled them with chlorine gas, and leased containers in state in conjunction with sale of gas. *South Texas Chlorine, Inc. v. Bullock* (App. 3 Dist. 1990) 792 S.W.2d 275. Taxation ⇨ 1238

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