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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 C. IMPOSITION AND COLLECTION OF SALES TAX****§ 151.052. Collection by Retailer**

(a) Except as provided by Subsection (d), a seller who makes a sale subject to the sales tax imposed by this chapter shall add the amount of the tax to the sales price, and when the amount of the tax is added:

- (1) it becomes a part of the sales price;
- (2) it is a debt of the purchaser to the seller until paid; and
- (3) if unpaid, it is recoverable at law in the same manner as the original sales price.

(b) The owner or former owner of tangible personal property, a factor of the owner or former owner, or an agent of the owner, former owner, or factor shall collect the sales tax and add the amount of the tax to the sales price of the tangible personal property if the person delivers the property to a consumer in this state or to another person for redelivery to a consumer in this state under a sale of the property that is not a sale for resale and that is made by a seller not engaged in business in this state.

(c) When several taxable items are sold together and at the same time, the sales tax is determined on the sum of the sales prices of the items sold exclusive of any item the sale of which is exempted by this chapter.

(d) For purposes of the printer's tax collection duty, it is presumed that printed materials that are distributed by the United States Postal Service singly or in sets addressed to individual recipients, other than the purchaser, and that are either produced at a printer's facility in this state or purchased in this state are for use in Texas and the printer must collect the tax imposed under this chapter. In order to overcome this presumption a purchaser of printed materials that are distributed by the United States Postal Service singly or in sets addressed to individual recipients, other than the purchaser, is required to issue an exemption certificate to the printer if the printed materials are for distribution to both in-state and out-of-state recipients. The certificate must contain the statement that the printed materials are for multistate use and that the purchaser agrees to pay to this state all taxes that are or may become due to the state on the taxable items purchased under the exemption certificate. In this subsection, "printed materials" is defined to be materials that are produced by web offset or rotogravure printing processes. A printer is relieved of the obligation of collecting the taxes imposed by this chapter on printed materials that are distributed by the United States Postal Service singly or in sets addressed to individual recipients, other than the purchaser, but is required to file a report as provided by Section 151.407.

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Acts 1981, 67th Leg., p. 1550, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 2001, 77th Leg., ch. 397, § 1, eff. Sept. 1, 2001.

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

HISTORICAL AND STATUTORY NOTES

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Acts 2001, 77th Leg., ch. 397, in subsec. (a), in the introductory paragraph, prior to "a seller", inserted "Except as provided by Subsection (d),"; and added subsec. (d).

Sections 3, 4, and 5 of Acts 2001, 77th Leg., ch. 397 provide:

"Sec. 3. The comptroller of public accounts of the State of Texas may adopt rules and forms to implement the collection requirements provided by Subsection (d), Section 151.052, Tax Code, as added by this Act.

"Sec. 4. (a) The change in law made by this Act affects only the printer and does not create a new tax or tax exemption or affect the imposition of a tax or the granting of an exemption under Chapter 151, Tax Code.

"(b) The legislature, by enacting this bill, expressly makes no statement, directly or implied, as to the existence or lack of existence of a tax liability on items mailed into this state. Neither this Act nor the action of this legislature shall be construed to affirm or deny the existence of any such tax liability.

"Sec. 5. (a) The change in law made by this Act applies only to the duty to collect a sales or use tax for a transaction that occurs on or after the effective date of this Act.

"(b) The duty to collect a sales or use tax for a transaction that occurs before the effective date of this Act is governed by the law in effect at the time of the transaction, and the former law is continued in effect for that purpose."

Prior Laws:

Acts 1941, 47th Leg., p. 269, ch. 184, art. X, § 1.

Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, art. X, § 1.

Acts 1955, 54th Leg., p. 1607, ch. 522, §§ 1, 2, 5, 10.

Vernon's Ann.Civ.St. arts. 7047l, §§ 1, 1a, 1 1/2; 7047l-1, §§ 1,

2(a) to (d), 5, 10.

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, arts. 20.01 to 20.20.

Acts 1961, 57th Leg., 1st C.S., p. 71, ch. 24, art. I, § 1.

Acts 1963, 58th Leg., p. 371, ch. 138, § 1.

Acts 1968, 60th Leg., 1st C.S., p. 4, ch. 2, § 5.

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Acts 1969, 61st Leg., 2nd C.S., p. 61, ch. 1, art. 1, §§ 1 to 13, 15 to 22, 38.

Acts 1971, 62nd Leg., p. 1194, ch. 292, art. 1, § 2.

V.A.T.S. Tax.-Gen. arts. 20.01, § (1); 20.021, § (A).

CROSS REFERENCES

Local state and use taxes added to taxes under this chapter, computation, see V.T.C.A., Tax Code § 322.103

ADMINISTRATIVE CODE REFERENCES

Comptroller of public accounts, state sales and use tax, promotional plans, coupons, retailer reimbursement, see 34 TAC § 3.301.

LIBRARY REFERENCES

2002 Main Volume

Taxation ↪ 1338.
Westlaw Topic No. 371.
C.J.S. Taxation § 1250.

RESEARCH REFERENCES

2003 Electronic Update

Encyclopedias

TX Jur. 3d Taxation § 149, Collection By Retailer.

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

Treatises and Practice Aids

7 Tex. Prac. Series § 38.03, Failure To Collect Sales Tax.

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NOTES OF DECISIONS

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1. In general

Provisions of V.A.T.S. Tax.-Gen. arts. 20.01 and 20.05(B) (repealed; see, now, 151.051 and this section) that sales tax shall be collected by retailer from consumer, that no tax shall be collected on sales in amounts of one cent to 24 cents, and that tax shall be paid on basis of two percent of all receipts, levied two percent sales tax and required collection from consumer to extent authorized by formula but required retailer to pay whole tax if his sales did not permit collection. *Calvert v. Canteen Co.* (Sup. 1963) 371 S.W.2d 556. Taxation ⌚ 1339

The sales tax is a transaction tax and either the seller or the purchaser may be looked to for payment of the tax. *Bullock v. Delta Indus. Const. Co., Inc.* (App. 3 Dist. 1984) 668 S.W.2d 502. Taxation ⌚ 1262

Though sales tax permit alone did not prove ownership of store from which obscene videotape was sold, reasonable jury could reasonably infer from other evidence that defendant owned store directly or indirectly, thus providing financial motive in promoting and assisting sale of videotapes, which could be considered as circumstance indicating guilt from which jury could reasonably infer that defendant acted with intent to promote and assist sales clerk in sale of film so as to be guilty of possession of obscene material with intent to promote. *Haddad v. State* (App. 5 Dist. 1993) 860 S.W.2d 947, petition for discretionary review refused. Obscenity ⌚ 17

2. Bankruptcy

Texas sales-use tax was nondischargeable trust-fund tax, regardless of how old taxes were at time Chapter 7 petition was filed. *In re Avant, Bkrcty.* W.D.Tex.1989, 110 B.R. 264. Bankruptcy ⌚ 3352

3. Beach user fees

Beach user fees charged by a local government under chapter 61 of the Natural Resources Code and General Land Office rules, see 31 TAC §§ 15.2, 15.8 (1998), are not subject to sales tax under chapter 151 of the Tax Code. Op.Atty.Gen.1999, No. JC-0081.

4. Persons liable

Statement in contract between residential home builder and independent contractor that contractor agreed to accept full responsibility for, and to indemnify and hold builder harmless from, payment of any taxes did not satisfy requirement that invoice include written statement that stated price included sales tax, and thus builder was liable for sales tax on services provided by independent contractors, where contract clause was indemnification clause,

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and merely assigned responsibility for paying sales tax to independent contractor. *Perry Homes v. Strayhorn* (App. 3 Dist. 2003) 108 S.W.3d 444. Taxation ⚡ 1268.1

5. Invoices, contracts or bills

Letters sent by residential home builder to independent contractors stating that it was expressly implied that contractors included required sales tax in purchase price did not satisfy requirement that invoice include written statement that stated price included sales tax. *Perry Homes v. Strayhorn* (App. 3 Dist. 2003) 108 S.W.3d 444. Taxation ⚡ 1268.1

In determining that invoices submitted to residential home builders by independent contractors did not clearly delineate amount of sales tax, Comptroller of Public Accounts interpretation of rule requiring that sales tax be separately stated on bill, contract, or invoice, or that there be a written statement to customer that stated price included sales tax was not arbitrary or capricious application of rule. *Perry Homes v. Strayhorn* (App. 3 Dist. 2003) 108 S.W.3d 444. Taxation ⚡ 1268.1

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Current through end of 2003 Third Called Session

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