



JULY 2009

# TAX TOPICS

## SALES AND USE TAX

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### School Fundraisers and Texas Sales Tax

Texas school districts, public schools, qualified exempt private schools and each bona fide chapter within a qualifying school are exempt from the payment of Texas sales and use tax on purchases of taxable items for their use, if the purchases are related to the organization's exempt function.

The organization must obtain a sales tax permit and collect and remit sales tax on taxable items it sells unless one of the exemptions listed below applies. An organization does not have to register for a sales tax permit if all its sales are of exempt items or if its sales take place through tax-free fundraisers.

#### Two One-Day Tax-Free Sales

School districts, public schools, qualified exempt private schools and bona fide chapters within a qualifying school may conduct two one-day tax-free sales or auctions each calendar year. For the purposes of this exemption, one day is counted as 24 consecutive hours and a calendar year is the 12-month period from January through December. See subsection (h) of Rule 3.322, "Exempt Organizations."

For example, a school may sell taxable items such as t-shirts, hats, uniforms, school supplies or crafts tax-free on a designated tax-free sale day. These days should be designated in advance so that purchasers are aware that the sales are not subject to tax. The organization may not collect tax on the transactions and keep the tax under the "tax-free" sale provision. The exemption does not apply to any item sold for more than \$5,000 unless it is manufactured by the organization or donated to the organization and not sold back to the donor.

Either the date on which the items are delivered by the vendor to the school organization or the day on which the school organization delivers the items to its customers may be designated as the one-day tax-free sale day. Persons buying from surplus inventory on the designated date do not owe tax. Those buying on subsequent dates owe tax unless the purchase occurs on the organization's other tax-free sale day.

For example, a school group selling yearbooks may accept pre-orders without collecting tax if the day the yearbooks will be delivered to customers is designated as one of the group's tax-free fundraisers. Surplus yearbooks sold during the same day also qualify for the exemption. Surplus yearbooks sold on other days are taxable unless sold at the group's other tax-free fundraiser.

If two or more groups hold a one-day tax-free sale together, the event counts as one tax-free sale for each participating organization. Each of those organizations then is limited to one additional tax-free sale during the remainder of the calendar year.

If an exempt organization is purchasing taxable items for resale during its designated tax-free sale days and it holds a sales tax permit, the organization may either give the retailer a resale certificate, Form 01-339 (front), or an exemption certificate, Form 01-339 (back) to purchase the items tax-free. A

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non-permitted exempt organization, however, may purchase items for resale tax-free by issuing an exemption certificate to the vendor for items sold during its two one-day, tax-free sales.

#### SCHOOLS AND BONA FIDE CHAPTERS

**T**o qualify as a bona fide chapter of a school, a group of students must be organized for an activity other than instruction or to have a tax-free sale. Bona fide chapters include student groups recognized by the school and organized by electing officers, holding meetings and conducting business. There is no limit on the number of bona fide chapters a school can have. Bona fide chapters can include whole grade levels (e.g. senior class, junior class or freshmen), but cannot be limited to specific classes (e.g. Senior English or Biology II). Various other school groups such as a student council, science club or drama club can qualify if they are composed of students and school staff.

A department of a school, such as a purchasing, accounting, maintenance or IT department, is not a bona fide chapter even though it is part of the school or school district.

Groups that are not considered bona fide chapters, unless otherwise qualified to hold the two one-day tax-free sales, must obtain a sales tax permit and collect and remit sales tax on all taxable items sold at fundraisers. Non-student organizations such as booster clubs and PTAs/PTOs cannot qualify as bona fide chapters of a school, but may qualify for the tax-free sale days under other provisions of the Tax Code. See the "Nonstudent Nonprofit Organizations" section in this publication for more information.

#### NON-QUALIFYING FUNDRAISERS – ACTING AS AN AGENT OR SALES REPRESENTATIVES

**W**hen a school, school group, PTA/PTO, booster club or other exempt organization raises funds by acting as a sales representative or commissioned sales agent for a for-profit retailer, the group is not responsible for reporting and remitting sales and use tax. As a result, however, the exempt organization is not considered to be the seller and cannot use a tax-free sale day for

this type of event. In these cases, the group receives a commission for holding a book fair or for selling candy, gift wrap, holiday ornaments, candles or similar items.

When an exempt organization acts as a commissioned sales agent or representative for a for-profit seller, the seller should provide instructions and information regarding the proper collection of tax. The for-profit retailer may advertise in the sales catalog or state on each invoice that tax is included or require that tax be calculated and collected based on the selling price of each taxable item. The for-profit retailer is then responsible for remitting the tax collected or backed out to the Comptroller. Similarly, sales of taxable items made through the Web site of a for-profit retailer are also taxable and may not be sold tax-free in connection with a fundraiser.

#### NONSTUDENT NONPROFIT ORGANIZATIONS

**N**onstudent nonprofit organizations that are not bona fide chapters of schools may qualify for two one-day tax-free sales or auctions on their own.

A **booster club** for a band, football team or similar group may hold two one-day tax-free sales or auctions once it has obtained a sales tax exemption from the Comptroller's office on its purchases.

A nonprofit organization with an Internal Revenue Service (IRS) exemption under Section 501(c)(3), (4), (8), (10) or (19) is exempt from sales and franchise taxes. A booster club that has a 501(c) federal exemptions should complete AP-204 and submit it, along with a copy of its IRS exemption letter, to the Comptroller's office. After the Comptroller's office notifies the club of its exempt status, the club can hold two one-day tax-free sales or auctions each calendar year.

**Parent-teacher associations** (PTAs) affiliated with the Texas state PTA or the national PTA are exempt as educational organizations and can hold two one-day tax-free sales or auctions each calendar year.

**Parent-teacher organizations** (PTOs), as well as **parent-teacher-student associations** (PTSAs) and **organizations** (PTSOs), are also exempt from sales tax as educational organizations.

PTAs *not* affiliated with the Texas state PTA or the national PTA, parent-teacher organizations

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(PTOs) and parent-teacher-student associations (PTSAs) and organizations (PTSOs) are also eligible for exemption from sales tax as educational organizations. These organizations should complete form AP-207 and submit it to the Comptroller's office. Once the exemption has been granted, these organizations can also hold two one-day tax-free sales or auctions each calendar year.

Sales of taxable items by PTAs, PTOs, PTSAs, and PTSOs made at other times of the year are subject to tax.

### Internet Sales

Sales of taxable items over the Internet are treated the same as sales of taxable items made at the school or at any other sales location. Schools, school groups and other non-student, nonprofit organizations that accept online orders through a Web site must collect sales tax on taxable items they sell online. An online sale occurring during a one-day tax-free sale, however, would qualify for the exemption.

### Food and Beverage Sales

A public or private elementary or secondary school, school group or PTA/PTO does not have to collect tax on sales of meals and food products (including candy and soft drinks) if the sales are made during the regular school day and by agreement with the proper school authorities. This exemption includes food, soft drinks and candy sold through vending machines.

PTAs/PTOs and other qualifying groups associated with a specific public or private elementary or secondary school or school group may also sell meals, food, candy or soft drinks tax-free outside of the school day if the sales are part of the organization's fundraising drive and all net proceeds go to the group for its exclusive use.

#### CONCESSION STANDS

Concession-stand food sales are exempt from tax when made by a school group, PTA/PTO or other group (such as a booster club) associated with a public or private elementary or secondary school, if the sales are part of the organization's fundraising drive and all net proceeds go to the organization for its exclusive use. The exemp-

tion applies to sales of soft drinks and candy, but does not include sales of alcoholic beverages. The group can issue an exemption certificate in lieu of paying tax on purchases of candy, sodas, gum and other taxable food items sold at its concession stand. The exemption certificate should state that the group will sell the items as a fundraiser.

#### ANNUAL BANQUETS AND ANNUAL FOOD FUNDRAISERS

All volunteer nonprofit organizations can hold a tax-free annual banquet or other food sale provided the event is not professionally catered; is not held in a restaurant, hotel or similar place of business; is not in competition with a retailer required to collect tax; and the food is prepared, served and sold by members of the organization. The exemption does not apply to the sale or purchase of alcoholic beverages. To qualify for exemption, the food sale must:

- be an annual event;
- last no more than one week;
- be a fundraising project exclusively provided by the volunteers of the participating nonprofit organizations;
- be non-commercial in every respect (that is, the food and beverages cannot be prepared or served by a caterer or a restaurant, and must be prepared and served by the participating organizations' volunteers, without pay); and
- not be held in competition with a retailer at the same event who must collect tax on food and beverage sales.

The annual food sale or banquet exemption does not apply to sales of alcoholic beverages or non-food items (e.g., arts, crafts or t-shirts). Alcoholic beverages are not food products and are taxable. The type of tax due (sales tax or mixed beverage gross receipts tax) depends upon the type of permit held by the selling organization. As of January 1, 2014, sales of alcoholic beverages, including beer, wine and mixers, made by the holders of a mixed beverage permit are subject to two taxes:

- The 6.7 percent mixed beverage gross receipts tax assessed on the seller, and
- The 8.25 percent mixed beverage sales tax assessed on the purchaser.

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Sales of beer and wine made by the holder of a beer and wine only permit are subject to sales tax.

### Nontaxable Sales

Some items are not subject to sales tax no matter who sells them.

#### NONTAXABLE FOOD ITEMS

Sales tax is not due on nontaxable food items. Examples of such items include cookie dough, pizza kits, cheese spreads, meat sticks, jelly, salsa, fresh fruit and mixes packaged for preparation at home.

#### MAGAZINE SUBSCRIPTIONS

Subscriptions to magazines entered as periodicals-class (formerly called second-class) mail and sold for six months or more are exempt from sales tax. Single issues and subscriptions for fewer than six months are taxable, however.

#### BAKERY ITEMS

Bakery products (including but not limited to pies, cakes, cookies, bagels and muffins) are exempt unless sold with plates or eating utensils.

#### GIFT CERTIFICATES AND PASSBOOKS

Sales of intangibles such as gift certificates and coupon passbooks are not subject to sales tax. Instead, retailers should collect tax when the certificate or coupon is redeemed for the purchase of taxable merchandise or services. The tax is based on the item's actual retail selling price less any cash discount given at the time of the sale (e.g., a deduction for a coupon). Of course, if the gift certificate is for a nontaxable service such as a haircut, manicure or facial, no sales tax is due when the certificate is redeemed. Taxable services are listed in "Taxable Services" (Tax Publication 96-259.)

#### CAR WASHES

Washing a car is not a taxable service under the Texas Tax Code. Groups holding car washes are not required to collect tax on their charges for this service.

### Amusement Services

The sale of an amusement service provided exclusively by a nonprofit organization, other than an IRS Section

501(c)(7) organization, is exempt from sales tax. For example, the sale of an admission ticket to a school carnival, dance, athletic event or musical concert is exempt.

### Periodicals and Writings

Periodicals and writings (reading materials including those presented on audio tape, videotape and computer disk) are exempt from tax if published and distributed by a religious, philanthropic, charitable, historical, scientific or other similar organization not operated for profit. A "similar" organization must be organized for a benevolent purpose and must not be operated for profit. Similar organizations include PTAs, PTOs, PTSAs and PTSOs, but exclude all public and private educational organizations.

This means that PTAs, PTOs, PTSAs and PTSOs may publish and sell printed reading materials such as yearbooks, books, calendars, directories, magazines, brochures and newsletters without collecting sales tax. The qualifying organization may issue a properly completed resale certificate to the printer in lieu of paying tax on charges for printing, binding and item placement.

Items that contain printed materials that can be read but primarily serve other purposes or functions, such as school logo t-shirts, bookmarks, photographs and novelties, are subject to sales tax *unless* sold during a qualifying and designated tax-free sale or auction.

School districts, schools and school groups, however, must collect tax on sales of printed reading materials unless the sale is designated as one of the organization's tax-free fundraisers.

### Donations

A purchaser using personal funds may give an exemption certificate to vendors when buying taxable items that will be donated to a qualifying organization, such as a school, before the individual makes any use of the items. The exemption certificate must state that the taxable item is being purchased by the individual for donation to an exempt organization and must clearly identify the organization accepting the a donation (see Tax Code Section 151.155[b]). If the purchaser makes use of the item before it is donated, the purchaser is

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responsible for paying or accruing tax on the item's purchase price.

Donations (gifts) of cash or taxable items or services made to an organization are not taxable sales unless the exempt organization gives the donor a taxable item in exchange for the donation, and the item is of proportionate or equal value to the donation.

**Sales to Students**

Generally, other than the exemptions previously identified, schools and associated groups must collect, report and remit sales tax on taxable items that they sell or taxable services they provide to others, including sales made to students.

Schools may issue a resale certificate in lieu of paying tax to suppliers when purchasing taxable

items to sell. Schools may issue an exemption certificate in lieu of paying tax when purchasing taxable items for their use or for giving away to students or others as part of a course of instruction. A district must collect tax on the sales price of taxable items when selling them to students or to others.

For example, if a school sells uniforms, gloves and shoes to drill team members, it must collect tax on the sales unless it designates their sale as one of its two one-day tax-free sales. The school may purchase the uniforms tax-free for resale to the drill team members.

The table at the bottom of the page is a short list of examples of taxable and nontaxable sales.

<b>TAXABLE</b>	<b>NONTAXABLE</b>
Rental of tangible personal property such as locks, musical instruments, calculators and computers	Rental of real property such as a gymnasium, auditorium, library or cafeteria
Horticultural products such as flower arrangements, roses, carnations, holiday greenery and poinsettias	Agricultural products (plants and seeds), the products of which ordinarily constitute food for human consumption
Cosmetology products such as shampoo, conditioner and nail polish sold to customers	Cosmetology services such as haircuts, shampoo, manicures and pedicures
Parking permits for the general public	Parking permits for public school students, faculty and staff
Animals that do not ordinarily constitute food or food products, such as hamsters, mice, cats and dogs	Farm animals such as pigs, cows, chickens and other livestock
Publications such as football, basketball or volleyball programs	Sales of advertising space in athletic programs, yearbooks, newspapers
Automobile repair parts (a separately stated charge for parts is taxable; a separately stated charge for repair labor is not taxable)	Automobile repair (a lump-sum charge for parts and labor)
Car carpet shampooing	Car washes
Magazines (single issue or subscription less than six months)	Magazine subscriptions for six months or longer

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#### Need More Information?

For more information, see:

- Rule 3.286, "Seller's and Purchaser's Responsibilities"
- Rule 3.322, "Exempt Organizations"
- Rule 3.293, "Food; Food Products; Meals; Food Service"
- Rule 3.298, "Amusement Services"
- Rule 3.299, "Newspapers, Magazines, Publishers, Exempt Writings"
- Tax Publication 96-122, "Exempt Organizations - Sales and Purchases" – Frequently Asked Questions section provides information about school organizations applying for exemption from state taxes.
- Tax Publication 96-259, "Taxable Services"

Please use our Texas Online Sales Tax Registration System to apply for a sales tax permit. An application also can be downloaded from our Tax Forms Online page. You can also obtain an application by calling 1-800-252-5555 or by visiting one of our enforcement field offices.

For questions about an organization's Texas tax-exempt status, please use our Texas Tax-Exempt Entity Search, write to [exempt.orgs@cpa.texas.gov](mailto:exempt.orgs@cpa.texas.gov), or call Tax Assistance at 1-800-252-5555.

For information on how to apply for federal exemptions, contact the U.S. Internal Revenue Service at 1-877-829-5500 or online at <http://www.irs.gov/>.

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