



JUNE 2014

# TAX TOPICS

## SALES AND USE TAX

Texas Comptroller of  
Public Accounts

### Garage Sales and Texas Sales Tax

#### Selling Personal Items – You May Need a Texas Sales and Use Tax Permit

If you are having a garage sale, or selling personal items through an auction website or an advertisement, you may have a sales tax responsibility.

Texas sales tax is due on sales of tangible personal property. “Tangible personal property” means property that can be seen, weighed, measured, felt or touched. Examples include clothing, shoes, CDs, DVDs, books, furniture, bicycles, toys and other personal items typically sold at a garage sale or other sales.

If you sell tangible personal property, you may be required to have a sales tax permit and collect tax, depending on how many sales you make during a 12-month period and the dollar amount of those sales.

If you already have a sales tax permit, sales tax is due on your sales of taxable items, unless another exemption applies to the sale, even if the sales are not made in the normal course of your business.

#### Sales by Individuals

If you make only “occasional sales,” as defined in Texas Tax Code Section 151.304, you are not required to have a sales tax permit or collect tax on sales of qualifying items. But, if you have a sales tax permit, the sales you make are not occasional sales.

“Occasional sales” can be made by a person who does not have, or is not required to have, a Texas sales and use tax permit or a similar permit or license issued by another state.

Occasional sales include:

- one or two sales of taxable items, regardless of price, during any 12-month period (Texas Tax Code Section 151.304(b)(1)); or

- sales totaling up to \$3,000 in a calendar year of items that were originally acquired for personal use by the person or a family member of the person selling them (Tax Code Section 151.304(b)(5)).

For example, in the same calendar year, you have a garage sale of your family’s personal items and earn \$1,000; sell your used bicycle for \$200; and sell your childhood toy for \$500 through an auction website. You have made more than two sales in a 12-month period, so the exemption in Section 151.304(b)(1) does not apply.

On the other hand, because the items you sold during the calendar year were originally acquired for personal use, and the sales total less than \$3,000, you qualify for the exemption in Section 151.304(b)(5).

If you keep selling taxable items after making more than two sales or reaching the \$3,000 limit on sales of personal items in a calendar year, you are considered to be engaged in business. You must obtain a sales tax permit and start collecting tax on all future sales of taxable items, beginning with the first sale after the limit is reached.

FOR MORE INFORMATION,  
VISIT OUR WEBSITE AT  
[Comptroller.Texas.Gov](http://Comptroller.Texas.Gov).

TO RECEIVE TAX HELP, SEE  
[comptroller.texas.gov/  
taxhelp](http://comptroller.texas.gov/taxhelp)

OR CALL  
1-800-252-5555.

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

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**GARAGE SALES AND TEXAS SALES TAX**

**Group Sales and Community-Wide Events**

The occasional sale exemption does not apply to:

- groups or organizations, including student and church groups, that collect items to sell at a garage sale; or
- community-wide events produced by a third party, if the seller is required to pay a fee for booth or space rental or a commission to participate in the event.

In these situations, sales tax must be collected, unless other exemptions apply.

**Artists, Craftsmen and Other Sellers**

If you are already in the business of selling taxable items, then you cannot qualify for the occasional sale exemption under either Section 151.304(b)(1) or (b)(5). A person who buys or otherwise obtains goods

from others for the purpose of reselling them (including barter or trades) or a person who routinely sells taxable items, including an artist or craftsman who fabricates goods for sale, is considered to be engaged in business. In that case, you are required to have a Texas sales tax permit and collect tax on all sales of taxable items, even on your personal items. In other words, if you are engaged in the business of making taxable sales, you cannot claim an exemption from tax on the first two sales in a 12-month period or on the first \$3,000 worth of personal taxable items sold in a calendar year.

As with all exemptions, the seller is required to maintain records to document that the exemption applies.

**Use the chart below to see if the occasional sale exemption applies to you.**

If ...	and...	then ...
you have a sales tax permit		sales tax is due (unless another exemption applies to the sale).
you are an individual who does not have, and is not required to have, a sales tax permit	<ul style="list-style-type: none"> <li>• during a calendar year, you sell taxable items originally bought for your personal use (or for use by a member of your family) and</li> <li>• the total amount of money received for the sales (no matter how many sales) is not more than \$3,000 during that calendar year</li> </ul>	you are not required to collect sales tax, and the purchaser does not owe use tax.
you are an individual or a business who does not have, and is not required to have, a sales tax permit	you make two sales in a 12-month period (regardless of the dollar amount of the sales)	<ul style="list-style-type: none"> <li>• the \$3,000 limit does not apply and</li> <li>• you are not required to collect sales tax, whether you are an individual or a business.</li> </ul> <p>Buyers with a sales tax permit must report the purchase of a taxable item as a “taxable purchase” on their sales tax return.</p>

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## Helpful Links and Publications

- Apply for a sales tax permit at [comptroller.texas.gov/taxpermit/](http://comptroller.texas.gov/taxpermit/).
- File a sales tax return and pay the tax due at [comptroller.texas.gov/taxinfo/sales/webfile\\_sales.html](http://comptroller.texas.gov/taxinfo/sales/webfile_sales.html).
- Sales tax returns (Forms 01-114 and 01-116) are available at [comptroller.texas.gov/taxinfo/taxforms/01-forms.html#Sales](http://comptroller.texas.gov/taxinfo/taxforms/01-forms.html#Sales).
- Update your sales tax account (change address, add a location or close a sales tax permit) at [comptroller.texas.gov/taxinfo/sales](http://comptroller.texas.gov/taxinfo/sales).
- *Engaged in Business (Sales and Use Tax)* at [comptroller.texas.gov/taxinfo/taxpubs/tx94\\_108.html](http://comptroller.texas.gov/taxinfo/taxpubs/tx94_108.html).
- *Guidelines for Collecting Local Sales and Use Tax* at [comptroller.texas.gov/taxinfo/taxpubs/tx94\\_105.pdf](http://comptroller.texas.gov/taxinfo/taxpubs/tx94_105.pdf).

## More Information

For more information about seller's and purchaser's responsibilities, see Comptroller Rule 3.316 and other sales tax information online at [comptroller.texas.gov/taxinfo/sales/](http://comptroller.texas.gov/taxinfo/sales/).

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