EXEMPT ORGANIZATIONS: SALES AND PURCHASES

NOVEMBER 2012

Texas Comptroller of Public Accounts

EXEMPT STATUS OVERVIEW

The Texas Tax Code provides tax exemptions for certain qualifying organizations for sales tax, hotel occupancy tax and franchise tax. The exemptions for which an organization might qualify are determined by the organization's purpose, activities and its formation.

EXEMPTION CRITERIA

Exemption from these state taxes are based largely on an organization's affiliation with its parent entity, assuming the following criteria:

- the organization is a recognized subordinate under the parent organization's group exemption;
- the parent organization's group exemption meets the requirements for exemption from one or more of these state taxes; and
- the parent organization's group exemption has been established on the Comptroller's records.

The parent organization's group exemption may be classified as a federal group exemption under one of the following 501(c) sections of the Internal Revenue Code (IRC): 501(c)(2), (3), (4), (5), (6), (7), (8), (10), (16), (19) and (25).

The group exemption may also be under another category of exemption, such as the religious, educational or charitable exemption provisions within the state statutes.

EXEMPTION APPLICATION

For an organization to be exempt from these state taxes based on its recognition as a subordinate under the parent organization's group exemption, the organization must complete the appropriate exemption application, and include:

- a letter from the parent organization that states the organization is a recognized subordinate under the group exemption
- the basis of the group exemption [i.e. 501(c)(3), 501(c)(6), religious, etc.]
- the date the organization was first recognized as a subordinate under that group exemption.

Exemption applications are available online at **comptroller.texas.gov/taxes/exempt/forms/.**

Guidelines to Texas Tax Exemptions (96-1045) can be found online at **comptroller.texas.gov/taxes/publications/96-1045.php**.

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.

FOR MORE INFORMATION, SEARCH OUR WEBSITE AT **Comptroller.Texas.Gov**

If the parent organization's 501(c) federal group exemption has not yet been established, the parent organization must submit to the Comptroller:

- a copy of the parent organization's Internal Revenue Service (IRS) 501(c) group exemption ruling letter and
- the IRS four-digit group exemption number.

The IRS website is **www.irs.gov**.

EXAMPLES OF NON-TAXABLE ENTITIES

Entities that are exempt by law do not need to apply for exemption. Examples of legally exempt entities include:

- the U.S. government, its political subdivisions, agencies and departments, and all branches of its military;
- Texas state and local governments, their agencies, departments, cities, school districts and other political subdivisions;
- Federal Credit Unions organized under 12 United States Code, §1768

Texas public schools, colleges and universities are exempt from sales tax under Section 151.309 of the Texas Tax Code. Texas colleges, universities and all public and private elementary and secondary schools are exempt from state hotel tax under Section 156.102.

Parent-teacher associations and booster clubs must apply for exemption as they are generally not covered by the school's exempt status.

The **Tax-Exempt Entity Search** lists entities with a current exemption from franchise, sales and/or hotel tax. Entities that are exempt by law will not normally be listed on the search. View the search online at **comptroller.texas.gov/taxes/exempt/search.php**.

SALES TAX

TAX-EXEMPT PURCHASES

Organizations that have received a letter of sales tax exemption from the Texas Comptroller do not have to pay sales and use tax on taxable items they buy, lease or rent if the items are necessary to the organization's exempt function.

Exempt organizations should claim an exemption at the time of purchase by providing a properly completed **exemption certificate** in lieu of paying tax to the retailer. A government entity's purchase voucher is sufficient proof of exempt status and an exemption certificate is not required on its purchases. Foreign governments and government agencies from other states are not exempt from Texas sales and use tax.

RETAILERS

Retailers must collect tax from an exempt organization unless a valid exemption certificate or government purchase voucher is provided. Retailers are not required under Texas law to accept a claim for exemption, but may choose to do so by accepting, in good faith, a properly completed exemption certificate.

If a retailer chooses not to honor an exemption certificate, the exempt organization can ask the seller to provide a properly completed **Assignment of Right to Refund** so the purchaser can **request a refund** of the tax directly from the Comptroller.

INDIVIDUALS

An authorized agent or employee can make tax-free purchases for an exempt organization by giving the vendor a completed exemption certificate. Items purchased tax free by an exempt organization cannot be used for the personal benefit of an individual or other private party.

When buying an item to be donated to an exempt organization, an individual can give the seller an exemption certificate in lieu of paying tax. If the individual uses the item before donating it, however, the exemption is lost and tax is due.

An employee of an exempt organization cannot claim an exemption when buying taxable items of a personal nature, even if the organization gives an allowance or reimbursement for such items. For example, meals, toiletries, clothing and laundry services are for personal use and are taxable.

Anyone traveling on official business for an exempt organization must pay sales tax on taxable purchases such as parking, whether reimbursed per diem or for actual expenses incurred.

A sales tax exemption does not include taxes on the purchase, rental or use of motor vehicles. Motor vehicle tax information is provided below.

REFUNDS

An exempt nonprofit organization is not eligible to receive refunds for purchases made on or after Sept. 1, 2009, if the purchase was made prior to the postmark date of the organization's application for exemption, or the date of the sales tax liability assessment as a result of a Comptroller audit, whichever is earlier.

If the Comptroller determines the organization met exemption requirements for a period prior to Sept. 1, 2009, based on the laws in effect during that period, purchases made by the organization within that period will be eligible for a sales tax refund, subject to the four-year statute of limitations.

These provisions apply to sales and use taxes paid by an organization directly to the Comptroller's office or to vendors and to refund claims filed with the Comptroller's office or with vendors. These provisions do not apply to governmental entities exempted under Tax Code Section 151.309.

The **Tax-Exempt Entity Search** can be used to verify the effective date of an organization's exemption qualification. Contact our office to confirm the organization's exempt status and eligibility for a refund of sales tax paid prior to Sept. 1, 2009, by calling 1-800-252-5555, or email us at **exempt.orgs@cpa.texas.gov**.

SHOULD AN EXEMPT ORGANIZATION COLLECT SALES TAX?

Exempt organizations must get a sales tax permit **comptroller.texas.gov/taxes/permit/** and collect and remit sales tax for all taxable items it sells. Exemptions are for purchases, not sales, though some exceptions are detailed below.

EXAMPLES OF TAX-FREE SALES

FUNDRAISERS

An organization does not have to register for a sales tax permit if all its sales are of exempt items, or sales made through tax-free fundraisers.

MEALS AND FOOD PRODUCTS

Exempt organizations do not have to collect sales tax on meals and food products, including candy and soft drinks, if the items are:

- sold by churches or at church functions conducted under the authority of a church;
- sold or served by a public or private school, school district, student organization or parent-teacher association in an elementary or secondary school during the regular school day by agreement with proper school authorities, including vending machine sales; or

FOR MORE INFORMATION, SEARCH OUR WEBSITE AT
Comptroller.Texas.Gov

- sold by a member or a volunteer of a nonprofit organization devoted exclusively to education or to physical or religious training, or by a group associated with private or public elementary and secondary schools as part of an organization's fund-raising drive, when all net proceeds from the sale go to the organization for its exclusive use.

Note: Alcoholic beverages are taxable. Sales of alcoholic beverages made by the holder of a mixed beverage permit are subject to the 14 percent mixed beverage gross receipts tax. Sales of beer and wine made by the holder of a beer and wine only permit are subject to sales tax.

ANNUAL BANQUETS AND SUPPERS

All volunteer, 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.

Note: The exemption does not apply to the sale of alcoholic beverages.

AUCTIONS, RUMMAGE SALES AND OTHER FUNDRAISERS

Each chapter of an exempt organization under the religious, educational or charitable categories, and organizations exempted from sales tax based on their IRS Section 501 (c)(3), (4), (8), (10) or (19) status, can hold two one-day, tax-free sales or auctions each calendar year (January – December).

Youth athletic organizations, volunteer fire departments, chambers of commerce and governmental entities may not hold tax-free sales or auctions.

ONE-DAY SALES

For one-day sales, exempt organizations are not required to collect sales tax. This exemption does not apply to items sold for more than $5,000, unless the item is manufactured by the organization or the item is donated to the organization and not sold back to the donor.

For purposes of the exemption, "one day" is counted as 24 consecutive hours. These days should be pre-designated so purchasers are aware of the tax exemptions. Organizations are prohibited from collecting and keeping taxes on these transactions.

The designated one-day, tax-free sale day is either the day the vendor delivers the items to the exempt organization or the day the organization delivers the items to its customers. Persons buying from surplus inventory on the designated date do not owe tax. For example, a church group selling cookbooks may accept pre-orders without collecting tax if the day the cookbooks will be delivered to customers is designated as one of the group's tax-free fundraisers. Surplus cookbooks sold during the same day also qualify for the exemption. Surplus cookbooks sold on other days are taxable unless sold at the group's other tax-free fundraiser.

If two or more groups together hold a one-day, tax-free sale, the event counts as one tax-free sale for each participating organization.

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 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.

STUDENT ORGANIZATIONS (HIGHER EDUCATION)

College or university student organizations affiliated with an institution of higher education can hold a one-day, tax-free sale each month. The organization must have a primary purpose other than engaging in business or performing an activity designed to make a profit, and the purpose of the sale must be to raise funds for the organization. This exemption does not apply to items sold for more than $5,000, unless the item is manufactured by the organization or the item is donated to the organization and not sold back to the donor.

NON-QUALIFYING FUNDRAISERS: ACTING AS AN AGENT OR SALES REPRESENTATIVE

When engaging in fundraising activities, an exempt organization needs to identify the seller of the taxable items in order to determine responsibility for collecting tax.

In some fundraising activities, an exempt organization will enter into a contract with a private, for-profit entity to sell taxable items. For example, a group may receive a commission for holding a book fair or for selling candy, gift wrap, or similar items, or the group will be provided with sales brochures and take orders for fulfillment by the for-profit entity. The exempt entity may collect the funds and remit an agreed portion to the for-profit entity. In these cases, the fundraising firm is considered the seller and is responsible for collection of applicable sales and use taxes. Exempt organizations are not responsible for sales taxes and does not use one of the organization's tax-free sales days for the fundraiser.

Many fundraising companies include sales tax due in the selling price of items. This practice is acceptable when the for-profit company discloses on the invoices or order brochures that Texas sales tax is included in the sales price. This allows the company to remit to the state any due sales taxes. In this instance, the exempt organization is not required to collect any tax amount over the sales price.

SENIOR CITIZENS GROUPS

Nonprofit senior citizen groups do not have to collect or remit sales tax on items they make and sell, provided they do not have more than four fundraising events per calendar year for a total of not more than 20 days per calendar year.

AMUSEMENT SERVICES

The sale of an amusement service provided exclusively by an exempt organization, other than an IRS Section 501(c)(7) organization, is exempt from sales tax as long as the proceeds do not benefit an individual except of a purely public charity See Rule 3.298, Amusement Services. For example, the sale of a ticket to a school carnival, dance, athletic event or musical concert is exempt.

For an event to qualify for exemption, the organization must distinguish itself as the sole provider in advertising (for example, billboards, radio, television and other media promoting the event), as well as on the face of the physical tickets. Tickets should reflect that the exempt organization is the provider, and that the event is exempt from Texas sales and use tax.

CAN A NONPROFIT ORGANIZATION HIRE A FOR-PROFIT ENTITY?

A nonprofit organization is allowed to hire a for-profit entity to supply expertise required to produce an event as long as the for-profit entity is not also considered a provider of the amusement service.

MEMBERSHIP DUES AND FEES

Nonprofit groups' membership dues and fees are tax exempt. Country clubs and similar organizations that provide amusement services do not qualify for this exemption.

PUBLICATIONS

Periodicals and writings are tax exempt if published and distributed by a religious, philanthropic, charitable, historical, scientific or IRS 501(c)(3) organization. Materials published by educational organizations do not qualify for this exemption.

HOTEL OCCUPANCY TAX

CHARITABLE, EDUCATIONAL OR RELIGIOUS ORGANIZATIONS

Charitable, educational or religious organizations that have received a letter of tax exemption from the Comptroller may claim exemption from the 6 percent state hotel occupancy tax. Local hotel tax must be paid, with some exceptions.

An organization can **apply for exemption** by using the appropriate application form.

Guidelines to Texas Tax Exemptions (**96-1045**) provides more details on the exemption process.

ENTITIES EXEMPT FROM STATE AND LOCAL HOTEL OCCUPANCY TAX

Entities exempt from both state and local hotel occupancy tax include:

- the U.S. government and its agencies, departments and all branches of the U.S. military. Government contractors are not exempt;
- foreign diplomatic personnel issued a hotel tax exemption card by the U.S. Department of State Office of Foreign Missions.
- designated Texas state officials who are issued a hotel tax exemption photo ID or card.
- nonprofit entities exempt from tax by law, other than the hotel tax, and who have received a letter of tax exemption from the Texas Comptroller.

Texas state agencies are not exempt, but may apply for a refund of hotel tax paid by employees to a hotel.

TRAVELING EMPLOYEES

An employee of an exempt organization traveling on official business is exempt. The manner of payment does not affect the exemption. For a representative who is not an employee, the exempt organization must pay the hotel directly with its funds (e.g., organization check, organization credit card or direct billing by the hotel).

HOW TO CLAIM HOTEL TAX EXEMPTION

A completed **Texas Hotel Occupancy Tax Exemption Certificate**, must be presented to the hotel to claim the exemption.

An exemption certificate may be accepted, in good faith, when presented with the supporting documentation described in **Rule 3.161(c)(2)**.

The **Tax-Exempt Entity Search** lists organizations that are exempt from sales, franchise and/or hotel occupancy taxes. Note: Entities that are exempt by law will not be normally listed on this search.

MOTOR VEHICLE SALES AND USE TAX

Motor vehicle sales tax exemptions are in very limited. The following qualifying organizations may claim an exemption from motor vehicle tax at the time of purchase on the **Application for Certificate of Title**.

Some nonprofit emergency medical service providers and volunteer fire departments can

buy fire trucks and emergency medical response vehicles tax free.

Churches do not have to pay tax when they purchase, rent or lease vans and buses designed to carry more than six passengers, as long as the vehicle is used at least 80 percent of the time to transport people to and from church services or religious meetings. Tax is due, however, on vehicles purchased for a minister's personal use.

Licensed childcare facilities that provide 24-hour residential care in a single residential group, both to children who do not require specialized services or treatment and children who are emotionally disturbed, may claim an exemption on the purchase, rental or lease of a vehicle that will be used primarily in transporting children residing at the facility.

MOTOR VEHICLE GIFTS AND NONPROFIT ORGANIZATIONS

A vehicle that is donated to, or given by, a nonprofit service organization qualifying under the Internal Revenue Code, Sec. 501(c)(3) is eligible for the $10 gift tax.

To document a gift, both the donor and person receiving the vehicle must complete a joint notarized Affidavit of Motor Vehicle Gift Transfer (Form 14-317) describing the transaction and the relationship between the parties. This document should be provided to the county tax assessor-collector along with the **Application for Certificate of Title**.

MOTOR VEHICLES RENTALS

The following organizations may claim a tax exemption when renting a motor vehicle:

- **public agency** – a public agency is an instrumentality of the U.S. government or a department, commission, board, office, institution or other agency of this state or of a county, city, town, school district, hospital district, water district or other special district or authority or political subdivision created by or under the Texas Constitution or statutes.
- **churches or religious societies** – no tax is due if the vehicle is designed to carry more than six passengers and at least 80 percent of the vehicle's operating time is used to provide transportation to and from church or religious services or meetings. A vehicle rented for the official or personal use of a minister or other church or organizational members is not exempt, even if the vehicle will be used for a church sponsored activity.
- **certain childcare facilities** – no tax is due when renting a vehicle to a qualified residential childcare facility to be used primarily to transport children residing in the facility. A qualified residential child-care facility means one licensed under Chapter 42 Human Resources Code to provide residential care 24 hours a day in a single residential group to children who do not require specialized services or treatment and children who are emotionally disturbed.

HOW TO CLAIM RENTAL VEHICLE EXEMPTION

To claim an exemption when renting a qualifying motor vehicle, the organization must include a **Motor Vehicle Rental Exemption Certificate** to the rental contract.

The certificate must be signed by an authorized representative of the group or organization that is renting the vehicle.

Vehicle rentals to other nonprofit or public service organizations, even if the organization is funded by a public agency, are not eligible for exemption.

FOR MORE INFORMATION, SEARCH OUR WEBSITE AT
Comptroller.Texas.Gov

01-339 (Back)
(Rev.4-13/8)

SAVE A COPY | CLEAR SIDE

Texas Sales and Use Tax Exemption Certification

This certificate does not require a number to be valid.

Name of purchaser, firm or agency	
Address *(Street & number, P.O. Box or Route number)*	Phone *(Area code and number)*
City, State, ZIP code	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: _____

Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

_____
_____
_____
_____
_____
_____

Purchaser claims this exemption for the following reason:

_____
_____
_____
_____
_____
_____

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

sign here ▶ Purchaser	Title	Date

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.
THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.
Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier.
Do not send the completed certificate to the Comptroller of Public Accounts.

Texas Comptroller of Public Accounts

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.

WE'RE HERE TO HELP!

If you have questions or need information, contact us:

For more information,
search our website at
Comptroller.Texas.Gov

Texas Comptroller of Public Accounts
111 East 17th Street
Austin, Texas 78711-1440

Sign up to receive email updates on the Comptroller topics of your choice at **comptroller.texas.gov/subscribe/**.

In compliance with the Americans with Disabilities Act, this document may be requested in alternative formats by calling the appropriate toll-free number listed or by sending a fax to 512-475-0900.

1-800-252-5555
911 Emergency Service/ Equalization Surcharge
Automotive Oil Fee
Battery Fee
Boat and Boat Motor Sales Tax
Customs Broker
Mixed Beverage Taxes
Off-Road, Heavy-Duty Diesel Equipment Surcharge
Oyster Fee
Sales and Use Taxes

1-800-531-5441
Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

1-800-442-3453
WebFile Help

1-800-252-1381
Bank Franchise
Franchise Tax

1-800-252-7875
Spanish

1-800-531-1441
Fax on Demand (Most frequently requested Sales and Franchise tax forms)

1-800-252-1382
Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge, Rental and Seller Financed Sales Tax
Motor Vehicle Registration Surcharge

1-800-252-1383
Fuels Tax
IFTA
LG Decals
Petroleum Products Delivery Fee
School Fund Benefit Fee

1-800-252-1384
Coastal Protection
Crude Oil Production Tax
Natural Gas Production Tax

1-800-252-1387
Insurance Tax

1-800-252-1385
Coin-Operated Machines Tax
Hotel Occupancy Tax

1-800-252-1386
Account Status
Officer and Director Information

1-800-862-2260
Cigarette and Tobacco

1-888-4-FILING (1-888-434-5464)
TELEFILE: To File by Phone

1-800-252-1389
GETPUB: To Order Forms and Publications

1-800-654-FIND (1-800-654-3463)
Treasury Find

1-800-321-2274
Unclaimed Property Claimants
Unclaimed Property Holders
Unclaimed Property Name Searches 512-463-3120 in Austin

1-877-44RATE4 (1-877-447-2834)
Interest Rate

Publication #96-122 • Revised November 2012