

TAX CODE

SUBTITLE C. LOCAL SALES AND USE TAXES

CHAPTER 321. MUNICIPAL SALES AND USE TAX ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. SHORT TITLE. This chapter may be cited as the Municipal Sales and Use Tax Act.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.002. DEFINITIONS. (a) In this chapter:

(1) "Additional municipal sales and use tax" means only the additional tax authorized by Section 321.101(b).

(2) "Municipality" includes any incorporated city, town, or village.

(3) "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant. An outlet, office, facility, or location that contracts with a retail or commercial business engaged in activities to which this chapter applies to process for that business invoices or bills of lading onto which sales tax is added is not a "place of business of the retailer" if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax imposed by this chapter or to rebate a portion of the tax imposed by this chapter to the contracting business.

(b) Words used in this chapter and defined by Chapter 151 have the meanings assigned by Chapter 151.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 2003, 78th Leg., ch. 1155, Sec. 1, eff. Sept. 1, 2003.

Sec. 321.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles A and B, Title 2, and Chapters 142 and 151 apply to the taxes and to the administration and enforcement of the taxes imposed by this

chapter in the same manner that those laws apply to state taxes, unless modified by this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.13, eff. Aug. 28, 1989; Acts 2003, 78th Leg., ch. 1310, Sec. 114, eff. Oct. 1, 2003.

Sec. 321.004. REFERENCES TO SALES OR USE TAX. A reference to a sales tax or a use tax imposed or authorized by this chapter is a reference to both the taxes imposed under Sections 321.101(a) and (b) unless otherwise provided.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. IMPOSITION OF SALES AND USE TAXES BY MUNICIPALITIES

Sec. 321.101. TAX AUTHORIZED. (a) A municipality may adopt or repeal a sales and use tax authorized by this chapter, other than the additional municipal sales and use tax, at an election in which a majority of the qualified voters of the municipality approve the adoption or repeal of the tax.

(b) A municipality that is not disqualified may, by a majority vote of the qualified voters of the municipality voting at an election held for that purpose, adopt an additional sales and use tax for the benefit of the municipality in accordance with this chapter. A municipality is disqualified from adopting the additional sales and use tax if the municipality:

(1) is included within the boundaries of a rapid transit authority created under Chapter 451, Transportation Code;

(2) is included within the boundaries of a regional transportation authority created under Chapter 452, Transportation Code, by a principal municipality having a population of less than 800,000, unless the municipality has a population of 400,000 or more and is located in more than one county;

(3) is wholly or partly located in a county that contains territory within the boundaries of a regional transportation authority created under Chapter 452, Transportation Code, by a principal municipality having a population in excess of 800,000, unless:

(A) the municipality is a contiguous municipality; or

(B) the municipality is not included within the

boundaries of the authority and is located wholly or partly in a county in which fewer than 250 persons are residents of both the county and the authority according to the most recent federal census; or

(C) the municipality is not and on January 1, 1993, was not included within the boundaries of the authority; or

(4) imposes a tax authorized by Chapter 453, Transportation Code.

(c) For the purposes of Subsection (b), "principal municipality " and "contiguous municipality " have the meanings assigned by Section 452.001, Transportation Code.

(d) In any municipality in which an additional sales and use tax has been imposed, in the same manner and by the same procedure the municipality by majority vote of the qualified voters of the municipality voting at an election held for that purpose may reduce, increase, or abolish the additional sales and use tax.

(e) An authority created under Chapter 451 or 452, Transportation Code, is prohibited from imposing the tax provided for by those chapters if within the boundaries of the authority there is a municipality that has adopted the additional sales and use tax provided for by this section.

(f) A municipality may not adopt or increase a sales and use tax or an additional sales and use tax under this section if as a result of the adoption or increase of the tax the combined rate of all sales and use taxes imposed by the municipality and other political subdivisions of this state having territory in the municipality would exceed two percent at any location in the municipality.

(g) For the purposes of Subsection (f), "territory" in a municipality having a population of 5,000 or less and bordering on the Gulf of Mexico does not include any area covered by water and in which no person has a place of business to which a sales tax permit issued under Subchapter F of Chapter 151 applies.

(h) Expired.

(i) A municipality for which the adoption or increase of a sales and use tax approved by the voters in an election held after May 1, 1995, and before December 31, 1995, is invalid because the

election combined into a single proposition proposal for adopting an economic development sales and use tax under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and an additional sales and use tax under Subsection (b) may adopt or increase the sales and use tax previously approved by the voters by ordinance or resolution of the governing body of the municipality. If the governing body of the municipality adopts or increases the sales and use tax under this subsection, the municipal secretary shall send to the comptroller by certified or registered mail a certified copy of the ordinance or resolution. The tax takes effect on the first day of the month following the expiration of the calendar quarter occurring after the date on which the comptroller receives the ordinance or resolution.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 54, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 2, Sec. 14.14(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 489, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 184, Sec. 2, eff. May 24, 1991; Acts 1991, 72nd Leg., ch. 223, Sec. 1, eff. May 29, 1991; Acts 1993, 73rd Leg., ch. 320, Sec. 1, eff. May 28, 1993; Acts 1993, 73rd Leg., ch. 1031, Sec. 25, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 65, Sec. 1, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 165, Sec. 30.264, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 705, Sec. 1, eff. Sept. 1, 1997.

Sec. 321.102. EFFECTIVE DATES: NEW TAX, TAX REPEAL, BOUNDARY CHANGE. (a) A tax imposed under this chapter or the repeal of a tax abolished under this chapter takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 321.405(b). This subsection does not apply to the additional municipal sales and use tax.

(b) The additional municipal sales and use tax takes effect or is increased, reduced, or repealed in the municipality on the October 1st after the expiration of the first complete calendar quarter after the date on which the comptroller receives notice

from the municipality of the adoption, increase, reduction, or repeal of the additional municipal sales and use tax.

(c) If a municipality in which the tax imposed under this chapter is in effect changes its boundaries, the municipal secretary shall send by United States registered or certified mail to the comptroller a certified copy of the ordinance that adds or detaches municipal territory and that shows the effective date of the boundary change. The ordinance must be accompanied by a map clearly showing the added or detached territory. Except as provided by Subsection (d), the tax takes effect in the added territory or is inapplicable to the detached territory on the first day of the first calendar quarter after the comptroller receives the ordinance and map.

(d) If, within 10 days after the receipt of an ordinance and map sent under Subsection (c), the comptroller notifies the secretary of the municipality that more time is required, the effective date of the application of the tax in the added or detached area is the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives the ordinance and map.

(e) If as a result of the imposition or increase in a sales and use tax by a municipality in which there is located all or part of a local governmental entity that has adopted a sales and use tax or as a result of the annexation by a municipality of all or part of the territory in a local governmental entity that has adopted a sales and use tax the overlapping local sales and use taxes in the area will exceed two percent, the entity's sales and use tax is automatically reduced in that area to a rate that when added to the combined rate of local sales and use taxes will equal two percent.

(f) If an entity's rate is reduced in accordance with Subsection (e), the comptroller shall withhold from the municipality's monthly sales and use tax allocation an amount equal to the amount that would have been collected by the entity had the municipality not imposed or increased its sales and use tax or annexed the area in the entity less amounts that the entity collects following the municipality's levy of or increase in its sales and

use tax or annexation of the area in the entity. The comptroller shall withhold and pay the amount withheld to the entity under policies or procedures that the comptroller considers reasonable.

(g) Subsections (e) and (f) do not apply if and during any period in which a local governmental entity has outstanding indebtedness or obligations that are payable wholly or partly from the sales and use tax revenue of the entity. A municipality may not implement the imposition or increase of the sales and use tax as a result of the circumstances described by Subsection (e) if, as a result of the implementation of that imposition or increase, the combined rate of all sales and use taxes imposed by the municipality, the local governmental entity, and any other political subdivisions having territory in the district would exceed two percent at any location in the municipality.

(h) A transit authority is not a local governmental entity for the purposes of Subsections (e) and (f).

(i) Subsection (g) does not apply to a local governmental entity or political subdivision created under Chapter 326, Local Government Code.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 256, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 184, Sec. 3, eff. May 24, 1991; Acts 1999, 76th Leg., ch. 1467, Sec. 2.67, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 1263, Sec. 74, eff. Sept. 1, 2001.

Sec. 321.1025. ANNEXATION TO CERTAIN REGIONAL TRANSPORTATION AUTHORITIES. (a) A municipality that is wholly or partly located in a county that contains territory within the boundaries of a regional transportation authority created under Chapter 452, Transportation Code, by a principal municipality having a population of more than 800,000 and that has adopted an additional sales and use tax for the benefit of the municipality may hold an election on the question of whether the municipality shall be annexed to the authority.

(b) The election must be held in the manner required by Chapter 452, Transportation Code.

(c) If the annexation is approved by the voters, the election is to be treated for all purposes as an election to abolish

the additional sales and use tax in the municipality and the tax is repealed in the manner provided by this chapter.

Added by Acts 1991, 72nd Leg., ch. 223, Sec. 2, eff. May 29, 1991.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.265, eff. Sept. 1, 1997.

Sec. 321.103. SALES TAX. (a) In a municipality that has adopted the tax authorized by Section 321.101(a), there is imposed a tax on the receipts from the sale at retail of taxable items within the municipality at the rate of one percent and at the same rate on the receipts from the sale at retail within the municipality of gas and electricity for residential use.

(b) In a municipality that has adopted the additional municipal sales and use tax, the tax is imposed at the rate approved by the voters. The rate, when the tax is adopted, must be equal to either one-eighth, one-fourth, three-eighths, or one-half of one percent. The rate may be reduced in one or more increments of one-eighth of one percent to a minimum of one-eighth of one percent or increased in one or more increments of one-eighth of one percent to a maximum of one-half of one percent, or the tax may be abolished. The rate that the municipality adopts is on the receipts from the sale at retail of all taxable items within the municipality and at the same rate on the receipts from the sale at retail within the municipality of gas and electricity for residential use unless the residential use of gas and electricity is exempted from the tax imposed under Section 321.101(a), in which case the residential use of gas and electricity is exempted under this subsection also.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 184, Sec. 4, eff. May 24, 1991.

Sec. 321.104. USE TAX. (a) In a municipality that has adopted the tax authorized by this chapter, there is imposed an excise tax on the use, storage, or other consumption within the municipality of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the municipality. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable items.

(b) In a municipality that has adopted the tax authorized by

this chapter, there is imposed an excise tax on the use, storage, or other consumption of gas or electricity for residential purposes and purchased from any retailer during the period that the tax is effective within the municipality. The tax is imposed at the same rate as the tax provided by Subsection (a).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 25, eff. Sept. 1, 1991.

Sec. 321.105. RESIDENTIAL USE OF GAS AND ELECTRICITY. (a) There are exempted from the taxes imposed by a municipality under this chapter the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption within the municipality of gas and electricity for residential use in any municipality that:

(1) adopted the tax on or after October 1, 1979; or

(2) adopted the tax before that time but:

(A) failed to exempt the residential use of gas and electricity before May 1, 1979; and

(B) has not reimposed the tax as provided by Subsection (c).

(b) A governing body of a municipality that adopted the taxes under this chapter before October 1, 1979, may, by ordinance adopted by a vote of a majority of the membership of the governing body and recorded in the municipal minutes, exempt from the taxes authorized by this chapter the receipts from the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption of gas and electricity for residential use.

(c) A governing body of a municipality that has adopted the taxes authorized by this chapter before May 1, 1979, and in which residential use of gas and electricity is exempted within the municipality, may reimpose the taxes on gas and electricity for residential use by ordinance adopted by a vote of the majority of the membership of the governing body and entered in the municipal minutes.

(d) The municipal secretary shall send to the comptroller by United States certified or registered mail a copy of an ordinance exempting or imposing the taxes on residential use of gas and

electricity.

(e) The exemption or reimposition of taxes on residential use of gas and electricity takes effect within the municipality as provided by Section 321.104(a) after receipt of a copy of the ordinance.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.106. FIRE CONTROL DISTRICT TAX. (a) Subject to an election held in accordance with Chapter 344, Local Government Code, a municipality in which a fire control, prevention, and emergency medical services district is established shall adopt a sales and use tax in the area of the district for the purpose of financing the operation of the fire control, prevention, and emergency medical services district. The revenue from the tax may be used only for the purpose of financing the operation of the fire control, prevention, and emergency medical services district. The proposition for adopting a tax under this section and the proposition for creation of a fire control, prevention, and emergency medical services district shall be submitted at the same election. For purposes of Section 321.101, a tax under this section is not an additional sales and use tax.

(b) A tax adopted for a district under this section for financing the operation of the district may be decreased in increments of one-eighth of one percent by order of the board of directors of the district.

(c) The rate of a tax adopted for a district under this section may be increased in increments of one-eighth of one percent, not to exceed a total tax rate of one-half percent, for financing the operation of the fire control, prevention, and emergency medical services district by order of the board of directors of the fire control, prevention, and emergency medical services district if approved by a majority of the qualified voters voting at an election called by the board and held in the district on the question of increasing the tax rate. At the election, the ballot shall be printed to provide for voting for or against the proposition: "The increase of the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District sales and use tax rate to

_____ percent." If there is an increase or decrease under this section in the rate of a tax imposed under this section, the new rate takes effect on the first day of the next calendar quarter after the expiration of one calendar quarter after the comptroller receives notice of the increase or decrease. However, if the comptroller notifies the president of the board of directors of the district in writing within 10 days after receipt of the notification that the comptroller requires more time to implement reporting and collection procedures, the comptroller may delay implementation of the rate change for one calendar quarter, and the new rate takes effect on the first day of the calendar quarter that follows the elapsed quarter.

(d) The comptroller shall remit to the municipality amounts collected at the rate imposed under this section as part of the regular allocation of other municipal tax revenue collected by the comptroller. The municipality shall remit that amount to the district. A retailer may not be required to use allocation and reporting procedures in the collection of taxes under this section that are different from the procedures that retailers use in the collection of other sales and use taxes under this chapter. An item, transaction, or service that is taxable in a municipality under a sales or use tax authorized by another section of this chapter is taxable under this section. An item, transaction, or service that is not taxable in a municipality under a sales or use tax authorized by another section of this chapter is not taxable under this section.

(e) If, in a municipality where a fire control, prevention, and emergency medical services district is composed of the whole municipality, a municipal sales and use tax or a municipal sales and use tax rate increase for the purpose of financing a fire control, prevention, and emergency medical services district is approved, the municipality is responsible for distributing to the district that portion of the municipal sales and use tax revenue received from the comptroller that is to be used for the purposes of financing the fire control, prevention, and emergency medical services district. Not later than the 10th day after the date the municipality receives money under this section from the

comptroller, the municipality shall make the distribution in the proportion that the fire control, prevention, and emergency medical services portion of the tax rate bears to the total sales and use tax rate of the municipality. The amounts distributed to a fire control, prevention, and emergency medical services district are not considered to be sales and use tax revenue for the purpose of property tax reduction and computation of the municipal tax rate under Section 26.041.

(f) For purposes of the tax imposed under this section, a reference in this chapter to the municipality as the territory in which the tax or an incident of the tax applies means only the territory located in the fire control, prevention, and emergency medical services district, if that district is composed of an area less than an entire municipality.

(g) The comptroller may adopt rules and the municipality's governing body may adopt orders to administer this section.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 2, eff. June 1, 2001.

Sec. 321.107. ADMINISTRATION OF LOCAL SALES AND USE TAXES IMPOSED BY OTHER GOVERNMENTAL ENTITIES. The imposition, computation, administration, enforcement, and collection of any local sales and use tax imposed by any other local governmental entity is governed by this chapter, except as otherwise provided by law. In this section, "other local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, that has a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax. The term does not include a county, county health services district, county landfill and criminal detention center district, metropolitan transportation authority, economic development district, crime control district, hospital district, emergency services district, or library district.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 54, eff. Oct. 1, 2003.

SUBCHAPTER C. COMPUTATION OF TAXES

Sec. 321.201. COMPUTATION OF SALES TAXES. (a) Each retailer in a municipality that has adopted a tax authorized by this chapter shall add each sales tax imposed by the municipality under this chapter and by Chapter 151 to the sales price, and the sum of

the taxes is a part of the price, a debt of the purchaser to the retailer until paid, and recoverable at law in the same manner as the purchase price. If the municipality imposes the tax on gas and electricity for residential use, only the municipal tax is added to the sales price of sales of gas and electricity for residential use.

(b) The amount of the total tax is computed by multiplying the combined applicable tax rates, or the rate of the municipal tax only for sales of gas and electricity for residential use in a municipality that imposes the tax on gas and electricity for residential use, by the amount of the sales price. If the product results in a fraction of a cent less than one-half of one cent, the fraction of a cent is not collected. If the fraction of a cent is one-half of one cent or more, the fraction shall be collected as one cent.

(c) The comptroller may publish schedules and brackets of amounts of taxes based on the formula provided by Subsection (b) for use in municipalities that have adopted the taxes authorized by this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.202. METHOD OF REPORTING: RETAILERS HAVING SALES BELOW TAXABLE AMOUNT. The exclusion provided by Section 151.411 applies to a retailer under this chapter 50 percent of whose receipts from the sales of taxable items comes from individual transactions in which the sales price is an amount on which no tax is produced from the combined state and local taxes.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.203. CONSUMMATION OF SALE. (a) A sale of a taxable item occurs within the municipality in which the sale is consummated. A sale is consummated as provided by this section regardless of the place where transfer of title or possession occurs.

Text of subsec. (b) effective until July 1, 2004

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales are consummated at that place of business except as provided by Subsection (e).

Text of subsec. (b) effective July 1, 2004

(b) If a retailer has only one place of business in this

state, all of the retailer's retail sales of tangible personal property are consummated at that place of business except as provided by Subsection (e).

Text of subsec. (c) effective until July 1, 2004

(c) If a retailer has more than one place of business in this state, a sale of a taxable item by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

Text of subsec. (c) effective July 1, 2004

(c) If a retailer has more than one place of business in this state, a sale of tangible personal property by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the property, if the retailer ships or delivers the property to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the property, if the purchaser or lessee takes possession of and removes the property from a place of business of the retailer.

Text of subsec. (d) effective until July 1, 2004

(d) If neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

Text of subsec. (d) effective July 1, 2004

(d) If neither the possession of tangible personal property is taken at nor shipment or delivery of the property is made from the retailer's place of business in this state, the sale is

consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

Text of subsec. (e) effective until July 1, 2004

(e) A sale is consummated at the location in this state to which a taxable item is shipped or delivered or at which possession is taken by the customer if transfer of possession of a taxable item occurs at, or shipment or delivery of the item originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item is shipped or delivered directly to the purchaser by the supplier.

Text of subsec. (e) effective July 1, 2004

(e) A sale of tangible personal property is consummated at the location in this state to which the property is shipped or delivered or at which possession is taken by the customer if transfer of possession of the property occurs at, or shipment or delivery of the property originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the property is shipped or delivered directly to the purchaser by the supplier.

(f) The sale of natural gas and electricity is consummated

at the point of delivery to the consumer.

Text of subsec. (g) effective until July 1, 2004

(g) The sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other transmission originates, unless the point of origin cannot be determined, in which case the sale is at the address to which the call is billed. However, the sale of mobile telecommunications services is consummated in accordance with the provisions of Section 151.061.

Text of subsec. (g) effective July 1, 2004

(g) The sale of mobile telecommunications services is consummated in accordance with Section 151.061.

Text of subsec. (g-1) effective July 1, 2004

(g-1) The sale of telecommunications services sold based on a price that is measured by individual calls is consummated at the location where the call originates and terminates or the location where the call either originates or terminates and at which the service address is also located.

Text of subsec. (g-2) effective July 1, 2004

(g-2) Except as provided by Subsection (g-3), the sale of telecommunications services sold on a basis other than on a call-by-call basis is consummated at the location of the customer's place of primary use.

Text of subsec. (g-3) effective July 1, 2004

(g-3) A sale of post-paid calling services is consummated at the location of the origination point of the telecommunications signal as first identified by the seller's telecommunications system or by information received by the seller from the seller's service provider if the system used to transport the signal is not that of the seller.

(h) The sale of an amusement service is consummated in the municipality in which the performance or other delivery of the service takes place.

(i) If a purchaser who has given a resale certificate makes any use of a taxable item that subjects the taxable item to the sales tax under the provisions of Section 151.154, the use or other consumption of the taxable item that subjected the taxable item to

the tax is consummated at the place where the taxable item is stored or kept at the time of or just before the use or consumption.

(j) The sale of services delivered through a cable system is consummated at the point of delivery to the consumer.

(k) The sale of garbage or other solid waste collection or removal service is consummated at the location at which the garbage or other solid waste is located when its collection or removal begins.

Text of subsec. (1) as added by Acts 2003, 78th Leg., ch. 1310, Sec. 115 and effective July 1, 2004

(1) Except as otherwise provided by this section, the sale of a taxable service, other than a service described by Section 151.330(f), is consummated at the location at which the service is performed or otherwise delivered.

Text of subsec. (1) added by Acts 2003, ch. 1155, Sec. 2

(1) If there is no place of business of the retailer because the comptroller determines that an outlet, office, facility, or location contracts with a retail or commercial business to process for that business invoices or bills of lading and that the outlet, office, facility, or location functions or exists to avoid the tax imposed by this chapter or to rebate a portion of the tax imposed by this chapter to the contracting business, a sale is consummated at the place of business of the retailer from whom the outlet, office, facility, or location purchased the taxable item for resale to the contracting business.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.22(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 810, Sec. 1, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 705, Sec. 26, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 370, Sec. 2, eff. Aug. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 55, eff. Oct. 1, 2003; Acts 2003, 78th Leg., ch. 1155, Sec. 2, 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 115, eff. July 1, 2004.

Sec. 321.204. COMPUTATION OF USE TAX. (a) In each municipality that has adopted the taxes authorized by this chapter, the taxes imposed by Section 321.104(a) and the tax imposed by Subchapter D, Chapter 151, are added together to form a single

combined tax rate, except:

(1) in a municipality that imposes the tax on gas and electricity for residential use only the rate of the municipal tax is used to determine the amount of tax on the use, storage, or other consumption of gas and electricity for residential use; and

(2) only the rate of the municipal tax is used in a situation described by Section 321.205(b).

(b) The formula prescribed by Section 321.201(b) applies to the computation of the amount of use taxes under this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.205. USE TAX: MUNICIPALITY IN WHICH USE OCCURS. (a) In determining the incidence of the use tax authorized by this chapter the name of the municipality adopting the tax is substituted in Subchapter D, Chapter 151, for "this state" where those words are used to designate the taxing entity or delimit the tax imposed. However, the excise tax authorized by this chapter on the use, storage, or consumption of a taxable item does not apply if the item is first used, stored, or consumed in a municipality or area that has not adopted the taxes authorized by this chapter.

(b) If a sale of a taxable item is consummated in this state but not within a municipality that has adopted the taxes authorized by this chapter and the item is shipped directly, or brought by the purchaser or lessee directly, into a municipality that has adopted the taxes authorized by this chapter, the item is subject to the municipality's use tax. The use is considered to be consummated at the location where the item is first stored, used, or consumed after the intrastate transit has ceased.

(c) If a taxable item is shipped from outside this state to a customer within this state and the use of the item is consummated within a municipality that has adopted the tax authorized by this chapter, the item is subject to the municipality's use tax and not its sales tax. A use is considered to be consummated at the first point in this state where the item is stored, used, or consumed after the interstate transit has ceased. A taxable item delivered to a point in this state is presumed to be for storage, use, or consumption at that point until the contrary is established.

(d) The holder of a direct payment permit issued under Chapter 151 who becomes liable for the use tax under this chapter by reason of the storage, use, or consumption of a taxable item purchased in this state under a direct payment exemption certificate shall allocate the tax to the municipality in which the item was first removed from the permit holder's storage, or if not stored, the place at which the item was first used or consumed by the permit holder after transportation. In this subsection an item is not considered to have been stored, used, or consumed because of a temporary delay or interruption necessary and incidental to its transportation or further fabrication, processing, or assembling within this state for delivery to the permit holder. A charge for fabrication, processing, or further assembly in a municipality that has adopted the tax under this chapter shall be subject to the municipal use tax.

(e) With respect to a taxable service, "use" means the derivation in the municipality of direct or indirect benefit from the service.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 27, eff. Sept. 1, 1991.

Sec. 321.206. INCIDENCE OF ADDITIONAL MUNICIPAL SALES AND USE TAX. For the purpose of determining the proper sales tax under this chapter and the proper excise tax on the use, storage, or other consumption of taxable items under Section 321.101(b):

(1) if a taxable item is used, stored, or otherwise consumed in a municipality that has adopted the additional municipal sales and use tax, the statutes listed in Section 322.108(a) apply; and

(2) if the sales tax applies in a municipality that has not adopted the municipal sales and use tax, the excise tax on the use, storage, or other consumption of the taxable item does not apply.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.15(a), eff. Aug. 28, 1989.

Sec. 321.207. LOCAL TAX INAPPLICABLE WHEN NO STATE TAX;

EXCEPTIONS. (a) The sales tax authorized by this chapter does not apply to the sale of a taxable item unless the sales tax imposed by Subchapter C, Chapter 151, also applies to the sale.

(b) The excise tax authorized by this chapter on the use, storage, or consumption of a taxable item does not apply to the use, storage, or consumption of a taxable item unless the tax imposed by Subchapter D, Chapter 151, also applies to the use, storage, or consumption.

(c) Subsections (a) and (b) do not apply to the taxes authorized by this chapter on the sale, production, distribution, lease, or rental of, and the use, storage, or consumption of gas and electricity for residential use.

(d) Subsection (b) does not apply to the application of the tax in a situation described by Section 321.205(b).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 28, eff. Sept. 1, 1991.

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Section 151.317(b).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.209. TRANSITION EXEMPTION: GENERAL PURPOSE SALES AND USE TAX. (a) For a period of three years only after the effective date of the tax authorized by Section 321.101(a) in a municipality, the receipts from the sale of, and the use, storage, and consumption of, taxable items are exempt from the tax imposed by the municipality under Section 321.101(a) if the notice required by Subsection (b) is given and if:

(1) the items are used for the performance of a written contract entered into before the effective date of the tax imposed under Section 321.101(a) in the municipality if the contract may be affected and the contract may not be modified because of the tax; or

(2) the items are used under the obligation of a bid submitted before the effective date of the tax imposed under Section 321.101(a) in the municipality if the contract may be affected and the bid may not be withdrawn or modified because of the

tax.

(b) The taxpayer must give the comptroller notice of the contract or bid on which an exemption is to be claimed within 60 days after the effective date of the tax imposed under Section 321.101(a) in the municipality.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.14(d), eff. Aug. 28, 1989.

Sec. 321.2091. TRANSITION EXEMPTION: ADDITIONAL MUNICIPAL SALES AND USE TAX. (a) The receipts from the sale, use, or rental of and the storage, use, or consumption of taxable items in this state are exempt from the adoption or increase of the additional municipal sales and use tax if the items are used:

(1) for the performance of a written contract entered into before the date the adoption or increase of the additional tax takes effect in the municipality, if the contract is not subject to change or modification by reason of the tax; or

(2) pursuant to an obligation of a bid or bids submitted prior to the date the adoption or increase of the additional tax takes effect in the municipality, if the bid or bids may not be withdrawn, modified, or changed by reason of the tax.

(b) The exemptions provided by this section have no effect after three years from the date the adoption or increase of the additional tax takes effect in the municipality.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 14.14(c), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 184, Sec. 5, eff. May 24, 1991.

Sec. 321.210. TELECOMMUNICATIONS EXEMPTION. (a) There are exempted from the taxes imposed under this chapter the sales within the municipality of telecommunications services unless the application of the exemption is repealed under this section. A municipality may not repeal the application of this exemption as it applies to interstate long-distance telecommunications services, but if a municipality has repealed the exemption before the effective date of Part 4, Article 1, H.B. No. 61, Acts of the 70th Legislature, 2nd Called Session, 1987, interstate long-distance telecommunications services in that municipality are not subject to

taxes imposed under this chapter.

(b) The governing body of a municipality by ordinance adopted by a majority vote of the governing body in the manner required for the adoption of other ordinances may repeal the application of the exemption provided by Subsection (a) for telecommunications services sold within the municipality.

(c) A municipality that has repealed the application of the exemption may in the same manner reinstate the exemption.

(d) A vote of the governing body of a municipality repealing the application of or reinstating the exemption must be entered in the minutes of the municipality. The municipal secretary shall send to the comptroller by United States certified or registered mail a copy of each ordinance adopted under this section. The repeal of the application of the exemption or a reinstated exemption takes effect within the municipality as provided by Section 321.102(a) after receipt of a copy of the ordinance.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 1, pt. 4, Sec. 33.

SUBCHAPTER D. ADMINISTRATION OF TAXES

Sec. 321.301. COMPTROLLER TO COLLECT AND ADMINISTER TAXES. The comptroller shall administer, collect, and enforce any tax imposed by a municipality under this chapter. The taxes imposed under this chapter and the tax imposed under Chapter 151 shall be collected together, if both taxes are imposed.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.302. COMPTROLLER'S REPORTING DUTIES. (a) The comptroller shall make quarterly reports to a municipality that has adopted the taxes authorized by this chapter if the municipality requests the reports. A report must include the name, address, and account number of each person in the municipality that has remitted to the comptroller a tax payment during the quarter covered by the report.

(b) If a municipality requests an additional report, the comptroller shall make an additional quarterly report to the municipality including the name, address, and account number, if any, of, and the amount of tax due from, each person doing business

in the municipality who has failed to pay the tax under this chapter to the municipality or under Chapter 151. The additional report must also include statements:

(1) showing whether or not there has been a partial tax payment by the delinquent taxpayer;

(2) showing whether or not the taxpayer is delinquent in the payment of sales and use taxes to the state; and

(3) describing the steps taken by the comptroller to collect the delinquent taxes.

(c) If a municipality determines that a person doing business in the municipality is not included in a comptroller's report, the municipality shall report to the comptroller the name and address of the person. Within 90 days after receiving the report from a municipality, the comptroller shall send to the municipality:

(1) an explanation as to why the person is not obligated for the municipal tax;

(2) a statement that the person is obligated for the municipal tax and the tax is delinquent; or

(3) a certification that the person is obligated for the municipal tax and that the full amount of the tax due has been credited to the municipality's account.

(d) The comptroller shall send by United States certified or registered mail to the municipal tax collector a notice of each person who is delinquent in the payment to the municipality of the taxes authorized by this chapter and shall send a copy of the notice to the attorney general. A notice sent under this subsection is a certification of the amount of tax owed and is prima facie evidence of a determination of that amount and of its delinquency.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.3022. TAX INFORMATION. (a) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter and that has a population of not more than 275,000 information relating to the amount of tax paid to the municipality under this chapter during the preceding or current calendar year by each person doing business in the municipality who annually remits to the comptroller state and local sales tax payments of more than

\$25,000.

(b) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the municipality, that is part of:

- (1) an interlocal agreement;
- (2) a tax abatement agreement;
- (3) a reinvestment zone;
- (4) a tax increment financing district;
- (5) a revenue sharing agreement;
- (6) an enterprise zone;
- (7) a neighborhood empowerment zone;
- (8) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(7); or
- (9) any area defined by the municipality for the purpose of economic forecasting.

(c) The comptroller shall provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments.

(d) If the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter, the comptroller shall refuse to provide the information to the municipality unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the municipality as requested.

(e) A request for information under this section must be made in writing by the municipality's mayor or chief administrative officer.

(f) Information received by a municipality under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality under this chapter, or for the purpose described in Subsection (g).

(g) Information received by a municipality under Subsection

(b) may be used by the municipality to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(h) The comptroller may set and collect from a municipality reasonable fees to cover the expense of compiling and providing information under this section.

(i) Notwithstanding Chapter 551, Government Code, the governing body of a municipality is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the municipality under this section.

Added by Acts 1995, 74th Leg., ch. 1000, Sec. 70, eff. Oct. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 291, Sec. 1, eff. May 29, 1999;
Acts 2001, 77th Leg., ch. 840, Sec. 1, eff. June 14, 2001; Acts
2003, 78th Leg., ch. 1285, Sec. 1, 2.

Sec. 321.3025. DISPOSITION OF AMOUNT ERRONEOUSLY COLLECTED. (a) If in a territory added to a municipality a retailer erroneously collects an amount as a tax imposed under this chapter before the date the taxes imposed under this chapter by the municipality take effect in the added territory under Section 321.102, the amount collected is treated as if it were revenue from the taxes imposed by the municipality under this chapter, and the comptroller shall collect and administer the amount in the same manner as tax revenue.

(b) This section does not affect the right of a person who paid an amount erroneously collected by a retailer to claim a refund or the authority of the comptroller to make a refund of that amount.
Added by Acts 1989, 71st Leg., ch. 291, Sec. 1, eff. June 14, 1989.

Sec. 321.303. SALES TAX PERMITS AND EXEMPTION AND RESALE CERTIFICATES. (a) Each place of business of a retailer must have a permit issued by the comptroller under Subchapter F, Chapter 151.

(b) The same sales tax permit, exemption certificate, and resale certificate required by Chapter 151 for the administration and collection of the taxes imposed by that chapter satisfy the requirements of this chapter. No additional permit or exemption or resale certificate may be required except that the comptroller may prescribe a separate exemption certificate form for the transition

exemption for prior contracts and bids under Section 321.209.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.304. DISCOUNTS FOR PREPAYMENT AND TAX COLLECTION. All discounts allowed a retailer under Chapter 151 for the collection and prepayment of the taxes under that chapter are allowed and applicable to the taxes collected under this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.305. PENALTIES. The penalties provided by Chapter 151 for violations of that chapter apply to violations of this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.306. COMPTROLLER'S RULES. The comptroller may adopt reasonable rules and prescribe forms that are consistent with this chapter for the administration, collection, reporting, and enforcement of this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.307. DELINQUENT TAXES: LIMITATIONS. The limitations for the bringing of a suit for the collection of a tax imposed or a penalty due under this chapter after the tax and penalty are delinquent or after a determination against the taxpayer are the same as limitations provided by Chapter 151.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.308. SEIZURE AND SALE OF PROPERTY. If the comptroller lawfully seizes property for the payment of the taxes imposed under Chapter 151 and the property owner is delinquent in the payment of taxes under this chapter, the comptroller shall sell sufficient property to pay the delinquent taxes and penalties of both taxes. The proceeds of a sale of seized property shall first be applied to the payment of amounts due the state and the remainder, if any, to the amounts due to the municipality to which the taxes are due.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.309. SUIT FOR TAX COLLECTION. (a) A municipality acting through its attorney may join as a plaintiff in any suit brought by the attorney general to seek a judgment for delinquent taxes and penalties due to the municipality under this chapter.

(b) A municipality may bring suit for the collection of taxes owed to the municipality under this chapter if:

(1) the taxes are certified by the comptroller in the notice required by Section 321.302(d);

(2) a written notice of the tax delinquency and the municipality's intention to bring suit is given by certified mail to the taxpayer, the attorney general, and the comptroller at least 60 days before the suit is filed; and

(3) neither the comptroller nor the attorney general disapproves of the suit.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.310. DISAPPROVAL OF MUNICIPAL SUIT. (a) The comptroller or the attorney general may disapprove of the institution of a suit by a municipality under Section 321.309(b) if:

(1) negotiations between the state and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the state and the municipality seeking to bring suit;

(2) the taxpayer owes substantial taxes to the state and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed;

(3) the state will bring suit against the taxpayer for all taxes due under Chapter 151 and this chapter; or

(4) the suit involves a critical legal question relating to the interpretation of state law or a provision of the Texas or United States constitution in which the state has an overriding interest.

(b) A notice of disapproval to a municipality must be in writing and give the reason for the determination by the comptroller or attorney general.

(c) A disapproval is final and not subject to review.

(d) Not earlier than one year after the date of a disapproval of the institution of a municipal collection suit, the municipality may again proceed as provided by Section 321.309(b) even though the liability of the taxpayer includes taxes for which the municipality has previously given notice and the comptroller or attorney general has disapproved of the suit.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.311. JUDGMENTS IN MUNICIPAL SUIT. (a) A judgment in a suit under Section 321.309(b) for or against a taxpayer does not affect a claim against the taxpayer by another municipality or the state unless the state is party to the suit.

(b) A municipality shall abstract a copy of each final judgment for taxes imposed under this chapter in a case in which the state is not a party and shall send to the comptroller a copy of the judgment and the abstract.

(c) A municipality shall by execution collect the taxes awarded to it in each judgment received by the municipality and is responsible for the renewal of the judgment before its expiration.

(d) The municipality shall notify the comptroller by certified mail of the amount of any taxes collected on the judgment.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.312. RETENTION OF CERTAIN MUNICIPAL SALES TAXES. A municipality that holds a sales and use tax permit issued by the comptroller and that imposes a sales and use tax may retain the portion of the tax that the municipality collects and that constitutes the municipality's own tax. The municipality shall remit to the comptroller all other applicable local sales and use taxes and the state sales and use tax.

Added by Acts 2001, 77th Leg., ch. 1263, Sec. 75, eff. Oct. 1, 2001.

SUBCHAPTER E. TAX ELECTION PROCEDURES

Sec. 321.401. CALLING OF ELECTION. (a) An election under this chapter is called by the adoption of an ordinance by the governing body of a municipality.

(b) The governing body may call the election by a vote of a majority of its members.

(c) The governing body shall call the election if a number of qualified voters of the municipality equal to at least 20 percent of the number of votes cast in the most recent regular municipal election petitions the governing body for a vote on the question.

(d) The governing body of any municipality that has not adopted the additional sales and use tax shall, on petition of qualified voters of the municipality equal in number to at least five percent of the number of voters registered in the

municipality, provide by ordinance for the calling and holding of an election on the question of adopting the additional sales and use tax.

(e) The governing body of any municipality that has adopted the additional sales and use tax shall, on petition of qualified voters of the municipality equal in number to at least five percent of the number of voters registered in the municipality, provide by ordinance for the calling and holding of an election on the question of increasing, reducing, or repealing the additional sales and use tax.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 184, Sec. 6, eff. May 24, 1991.

Sec. 321.402. DEADLINES AFTER PETITION. (a) After the receipt of a petition for an election under this chapter, the governing body of a municipality shall determine the sufficiency of the petition within 30 days.

(b) If the petition is sufficient, the governing body shall pass the ordinance calling the election within 60 days after receiving the petition.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.403. TIME OF ELECTION. (a) An election under this chapter to adopt the tax authorized under Section 321.101(a) must be held on the first succeeding uniform election date for which sufficient time elapses for the holding of an election.

(b) An election on the approval of the additional sales and use tax must be held on the next succeeding uniform election date not less than 30 days after the passage of the ordinance calling the election.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.404. BALLOT WORDING. (a) In an election to adopt the tax, the ballot shall be printed to provide for voting for or against the applicable proposition: "A one percent sales and use tax is adopted within the city" or "The adoption of an additional sales and use tax within the city at the rate of _____ of one percent to be used to reduce the property tax rate" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

(b) In an election to repeal the tax, the ballot shall be printed to provide for voting for or against the applicable proposition: "The local sales and use tax within the city is abolished" or "The abolition of the additional sales and use tax within the city."

(c) In a municipality that does not impose a property tax, the ballot at an election to adopt the additional municipal sales and use tax shall be printed to provide for voting for or against the following proposition: "The adoption of an additional sales and use tax within the city at the rate of _____ of one percent" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.14(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 184, Sec. 7, eff. May 24, 1991.

Sec. 321.405. OFFICIAL RESULTS OF ELECTION. (a) Within 10 days after an election in which the voters approve of the adoption or abolition of a tax authorized by this chapter, the governing body of the municipality shall by resolution or ordinance entered in its minutes of proceedings, declare the results of the election. A resolution or ordinance under this section must include statements showing:

- (1) the date of the election;
- (2) the proposition on which the vote was held;
- (3) the total number of votes cast for and against the proposition; and
- (4) the number of votes by which the proposition was approved.

(b) If the application of the taxes that may be imposed under this chapter is changed by the results of the election, the municipal secretary shall send to the comptroller by United States certified or registered mail a certified copy of the resolution or the ordinance along with a map of the municipality clearly showing its boundaries.

(c) Not later than the 30th day after the date the comptroller receives a certified copy of an ordinance or resolution showing the adoption of the additional municipal sales and use tax,

the comptroller shall notify the municipal secretary that he is prepared for the administration of the tax.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.406. FREQUENCY OF ELECTION. An election under this chapter in a municipality may not be held earlier than one year after the date of any previous election under this chapter in the municipality.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.407. ELECTION CONTEST: NOTICE. (a) If an election held under this chapter is contested, the contestant shall send to the comptroller by United States certified or registered mail within 10 days after the filing of the contest a notice of contest containing the style of the suit, the date it was filed, its case number, and the name of the court in which the contest is pending.

(b) A court may not hear an election contest of an election held under this chapter unless the comptroller is notified within the time and in the manner provided by this section.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.408. ELECTION CONTEST: DELAYED EFFECTIVE DATE. (a) When the comptroller receives a notice of contest of an election under this chapter, the effective date of the tax or the abolition of a tax is suspended.

(b) When a final judgment is entered in the election contest, the municipal secretary shall notify the comptroller by United States certified or registered mail and enclose a certified copy of the final judgment.

(c) If the final judgment in the election contest results in a change in the tax status of the municipality under this chapter, the tax or the abolition of the tax takes effect as provided by Section 321.102 except that the notice of the final judgment is substituted for the notice of election results prescribed by Section 321.405.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. REVENUE DEPOSIT, DISTRIBUTION, AND USE

Sec. 321.501. TRUST ACCOUNT. (a) The comptroller shall deposit the taxes collected by the comptroller under this chapter

in trust in the separate suspense account of the municipality from which the taxes were collected.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(44).

(c) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(44).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.123, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 285, Sec. 31(44), eff. Sept. 1, 2003.

Sec. 321.502. DISTRIBUTION OF TRUST FUNDS. At least twice during each state fiscal year and at other times as often as feasible, the comptroller shall send to the municipal treasurer or to the person who performs the office of the municipal treasurer payable to the municipality the municipality's share of the taxes collected by the comptroller under this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.503. STATE'S SHARE. Before sending any money to a municipality under this subchapter the comptroller shall deduct two percent of the amount of the taxes collected within the municipality during the period for which a distribution is made as the state's charge for its services under this chapter and shall, subject to premiums payments under Section 321.501(c), credit the money deducted to the general revenue fund.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.504. AMOUNTS RETAINED IN TRUST ACCOUNT. (a) The comptroller may retain in the suspense account of a municipality a portion of the municipality's share of the tax collected for the municipality under this chapter, not to exceed five percent of the amount remitted to the municipality. If the municipality has abolished the tax, the amount that may be retained may not exceed five percent of the final remittance to the municipality at the time of the termination of the collection of the tax.

(b) From the amounts retained in a municipality's suspense account, the comptroller may make refunds for overpayments to the account and to redeem dishonored checks and drafts deposited to the credit of the account.

(c) Before the expiration of one year after the effective date of the abolition of a municipality's tax under this chapter the

comptroller shall send to the municipality the remainder of the money in the municipality's account and shall close the account.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.505. INTEREST ON TRUST ACCOUNT. Interest earned on all deposits made with the comptroller under Section 321.501, including interest earned from retained suspense accounts, shall be credited to the general revenue fund.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.124, eff. Sept. 1, 1997.

Sec. 321.506. USE OF TAX REVENUE BY MUNICIPALITY. Except as provided by Section 321.507, the money received by a municipality under this chapter is for the use and benefit of the municipality and may be used for any purpose for which the general funds of the municipality may be used, except that a municipality may not pledge the revenue received under this chapter to the payment of bonds or other indebtedness.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.507. USE OF ADDITIONAL MUNICIPAL SALES AND USE TAX. (a) In each year in which a municipality imposes an additional municipal sales and use tax, if the revenue from the collection of the additional tax exceeds the amount of taxes computed for the municipality under Section 26.04(c), except for the amount required to be deposited in a special account under Subsection (b), the excess shall be deposited in an account to be called the municipal sales tax debt service fund. Revenue deposited in the municipal sales tax debt service fund may be spent only for the reduction of lawful debts of the municipality, except that deposits that exceed the amount of revenue needed to pay the debt service needs of the municipality in the current year may be used for any municipal purpose consistent with the municipal budget.

(b) Revenue from the collection of the additional municipal sales and use tax in each of the first three years in which the tax is imposed in the municipality in excess of the amount determined as provided by Section 26.041(d), for each year shall be deposited in an account to be called the excess sales tax revenue fund. During

those three years, revenue deposited in the excess sales tax revenue fund may be spent only if and to the extent that taxes or other revenues of the municipality are collected in amounts less than anticipated. After that period, the revenue in the fund may be used for any municipal purpose consistent with the municipality's budget. The fund ceases to exist when all revenue deposited in the fund has been spent. This subsection does not apply to a municipality that does not impose a property tax.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.16(a), eff. Aug. 28, 1989.

Sec. 321.508. PLEDGE OF TAX REVENUE. (a) A municipality may call and hold an election on the issue of authorizing the municipality to pledge a percentage of the sales and use tax revenue received under Section 321.101(a) or (b), or both, to the payment of obligations issued to pay all or part of the costs of one or more sports and community venue projects located in the municipality.

(b) The ballot at the election under this section must be printed to permit voting for or against the proposition: "Authorizing the City of _____ (insert name of municipality) to pledge not more than _____ percent (insert percentage not to exceed 25 percent) of the revenue received from the _____ (insert municipal sales and use tax, additional municipal sales and use tax, or both) previously adopted in the city to the payment of obligations issued to pay all or part of the costs of _____ (insert description of each sports and community venue project)."

(c) If a majority of the voters vote in favor of the proposition, the municipality may:

(1) issue bonds, notes, or other obligations that are payable from the pledged revenues to pay for all or part of the costs of the sports and community venue project or projects described in the proposition; and

(2) set aside the portion of the revenue approved at the election that the municipality actually receives and pledge that revenue as security for the payment of the bonds, notes, or other obligations.

(d) If the municipality pledges revenue under Subsection

(c), the pledge and security interest shall continue while the bonds, notes, or obligations, including refunding obligations, are outstanding and unpaid.

(e) The municipality may direct the comptroller to deposit the pledged revenue to a trust or account as may be required to obtain the financing and to protect the related security interest.

(f) Sections 321.506 and 321.507 do not apply to taxes pledged under this section.

(g) In this section, "sports and community venue project" has the meaning assigned by Section 334.001, Local Government Code. Added by Acts 1997, 75th Leg., ch. 551, Sec. 4, eff. Sept. 1, 1997.

Sec. 321.509. TAX POWERS OF MUNICIPALITY NOT LIMITED. This chapter does not abolish or limit the tax powers of a municipality. Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.