

TAX CODE

CHAPTER 323. COUNTY SALES AND USE TAX ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 323.001. SHORT TITLE. This chapter may be cited as the County Sales and Use Tax Act.

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

Sec. 323.002. DEFINITIONS. The words used in this chapter and defined by Chapters 151 and 321 have the meanings assigned by Chapters 151 and 321.

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

Sec. 323.003. 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. 117, eff. Oct. 1, 2003.

SUBCHAPTER B. IMPOSITION OF SALES AND USE TAXES BY COUNTIES

Sec. 323.101. TAX AUTHORIZED. (a) A qualified county may adopt or repeal the county sales and use tax authorized by this chapter at an election in which a majority of the qualified voters of the county approve the adoption or repeal of the tax, as applicable.

(b) A county is qualified to adopt the tax only if no part of the county is located in a rapid transit authority created under Chapter 451, Transportation Code, or a regional transportation authority created under Chapter 452 of that code.

(c) An authority created under Chapter 451 or 452, Transportation Code, is prohibited from imposing the tax provided for by those chapters in a county in which the county sales and use tax provided for by this section is in effect or is scheduled to take effect. For the purposes of this section, an authority is not considered to be located in any county in which fewer than 250 persons are both residents of the authority and the county.

(d) A county may not adopt a sales and use tax under this section if as a result of the adoption of the tax the combined rate

of all sales and use taxes imposed by the county and other political subdivisions of this state having territory in the county would exceed two percent at any location in the county.

(e) If the voters of a county approve the adoption of a sales and use tax at an election held on the same election date on which a municipality having territory in the county adopts a sales and use tax or an additional sales and use tax and as a result the combined rate of all sales and use taxes imposed by the county and other political subdivisions of this state having territory in the county would exceed two percent at any location in the county, the election to adopt a county sales and use tax has no effect.

(f) The provisions of this chapter govern the application, collection, and administration of a sales and use tax imposed under Chapter 285, 775, or 776, Health and Safety Code, to the extent not inconsistent with the provisions of those chapters. Provided, however, that Subsection (b) shall not apply to a tax authorized under those chapters.

(g) Expired.

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. 2, eff. Oct. 20, 1987; Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 6, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 65, Sec. 2, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 165, Sec. 30.272, eff. Sept. 1, 1997.

Sec. 323.102. EFFECTIVE DATES: NEW TAX, TAX REPEAL. (a) Except as provided by Subsection (c), a tax imposed under this chapter takes effect on the October 1st 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 323.405(b).

(b) The repeal of a tax abolished under this chapter takes effect on the October 1st 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 323.405(b).

(c) A tax imposed under Section 323.105 of this code or Chapter 326, Local Government Code, takes effect on 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 a notice of the action as required by Section 323.405(b).

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

Amended by Acts 1989, 71st Leg., ch. 256, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 342, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1467, Sec. 2.69, eff. June 19, 1999.

Sec. 323.103. SALES TAX. In a county that has adopted the tax authorized by this chapter, there is imposed a tax on the receipts from the sale at retail of taxable items within the county at the rate of one-half of one percent, or in a county that includes no territory within the limits of a municipality, one percent.

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

Sec. 323.104. USE TAX. In a county that has adopted the tax authorized by this chapter, there is imposed an excise tax on the use, storage, or other consumption within the county of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the county. 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 item. With respect to a taxable service, "use" means the derivation in the county 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. 32, eff. Sept. 1, 1991.

Sec. 323.105. CRIME CONTROL DISTRICT TAX. (a) Subject to an election held in accordance with the Crime Control and Prevention District Act, a county in which a crime control and prevention 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 crime control and prevention district. The revenue from the tax may be used only for the purpose of financing the operation of the crime control and prevention district. The proposition for adopting a tax under this section and the proposition for creation of a crime control and prevention district shall be submitted at the same election. For purposes of Subsection (c) of Section 323.101 of this code, a tax under this section is not a county 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 board of directors or the governing body of the governmental entity that proposed the creation of the crime control and prevention district may call an election on the question of decreasing the tax rate in increments of one-eighth of one percent in the district if the district was created before January 1, 1996. The board of directors or governing body may dedicate a portion of the tax for the payment of bonds used in conjunction with the renovation or extension of a county-owned or municipally owned convention center facility, as defined in Section 351.001, that was constructed before 1969 if the dedication is approved by a majority of the qualified voters in an election held in the district on the question of decreasing the tax rate. At the election, the ballot shall be printed to provide for voting for or against the following proposition: "The decrease of the \_\_\_\_\_ Crime Control and Prevention District sales and use tax to \_\_\_\_\_ percent and authorizing the use of \_\_\_\_\_ of one percent for the payment of bonds issued for the renovation or extension of certain county-owned or municipally owned convention center facilities as that term is defined under Section 351.001, Tax Code, and authorizing that the tax expire on payment of the bonds."

(d) 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 crime control and prevention district, by order of the board of directors of the crime control and prevention 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 following proposition: "The increase of the \_\_\_\_\_ Crime Control and Prevention District sales and use tax rate to \_\_\_\_\_ percent." If there is an increase or decrease under this subsection 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 whole calendar quarter. In that event, the new rate takes effect on the first day of the next calendar quarter following the elapsed quarter.

(e) The comptroller shall remit to the county amounts collected at the rate imposed under this section as part of the regular allocation of county tax revenue collected by the comptroller if the district is composed of the entire county. The comptroller shall, if the district is composed of an area less than the entire county, remit that amount to the district. Retailers may not be required to use the allocation and reporting procedures in the collection of taxes under this section 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 county 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 county under a sales or use tax authorized by another section of this chapter is not taxable under this section.

(f) If, in a county where a crime control and prevention district is composed of the whole county, a county sales and use tax or a county sales and use tax rate increase for the purpose of financing a crime control and prevention district is approved, the county is responsible for distributing to the district that portion of the county sales and use tax revenue received from the comptroller that is to be used for the purposes of financing the crime control and prevention district. Not later than the 10th day after the date the county receives funds under this section from the comptroller, the county shall make the distribution in the proportion that the crime control and prevention portion of the tax rate bears to the total sales and use tax rate of the county. The

amounts distributed to a crime control and prevention district are not considered to be sales and use tax revenue for the purpose of property tax reduction and computation of the county tax rate under Section 26.041, Tax Code.

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

(h) The comptroller may adopt rules and the county commissioners court may adopt orders to administer this section.

Added by Acts 1989, 71st Leg., ch. 664, Sec. 2, eff. June 14, 1989.  
Amended by Acts 1993, 73rd Leg., ch. 864, Sec. 15, eff. June 18, 1993; Acts 1997, 75th Leg., ch. 1248, Sec. 6, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.70, eff. Oct. 1, 1999.

#### SUBCHAPTER C. COMPUTATION OF TAXES

Sec. 323.201. COMPUTATION OF SALES TAXES. (a) Each retailer in a county that has adopted the tax authorized by this chapter shall add the sales tax imposed by this chapter and by Chapter 151, plus any other applicable sales tax, 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.

(b) The amount of the total tax is computed by multiplying the combined applicable tax rates 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.

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

Sec. 323.202. 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. 323.203. CONSUMMATION OF SALE. (a) A sale of a taxable item occurs within the county 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 taxable 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 taxable 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 county 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. (l) effective July 1, 2004

(l) 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.

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(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 810, Sec. 2, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 705, Sec. 33, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 370, Sec. 3, eff. Aug. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 58, eff. Oct. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 118, eff. July 1, 2003.

Sec. 323.204. COMPUTATION OF USE TAX. In each county that has adopted the taxes authorized by this chapter, the tax imposed by Section 323.104, by other applicable local taxes, and by Subchapter D, Chapter 151, are added together to form a single combined tax rate, except only the rate of the county tax is used in a situation described by Section 323.205(b).

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

Sec. 323.205. USE TAX: COUNTY IN WHICH USE OCCURS. (a) In determining the incidence of the use tax authorized by this chapter, the name of the county 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 taxable item is first used, stored, or consumed in a county 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 county that has adopted the taxes authorized by this chapter and the taxable item is shipped directly, or brought by the purchaser or lessee directly, into a county that has adopted the taxes authorized by this chapter, the taxable item is subject to the county'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 taxable item is consummated within a county that has adopted the tax authorized by this chapter, the taxable item is subject to a county's use tax and not its sales tax. A use is considered to be consummated at the first point in this state where the taxable 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 county 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 county that has adopted the tax under this chapter shall be subject to the county use tax.

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

Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 34, eff. Sept. 1, 1991.

Sec. 323.206. COUNTY 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 an 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 323.205(b).

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

Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 35, eff. Sept. 1, 1991.

Sec. 323.207. 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. 323.208. TELECOMMUNICATIONS EXEMPTION. (a) There are exempted from the taxes imposed under this chapter the sale within the county of telecommunications services unless the application of the exemption is repealed under this section. A county may not repeal the application of this exemption as it

applies to interstate long-distance telecommunications services, but if a county 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 county are not subject to taxes imposed under this chapter.

(b) The commissioners court of a county by a majority vote may repeal the application of the exemption provided by Subsection (a) for telecommunications services sold within the county.

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

(d) A vote of the commissioners court repealing the application of or reinstating the exemption must be entered in the minutes of the court. The county judge shall send to the comptroller by United States certified or registered mail a copy of each order adopted under this section. The repeal of the application of the exemption or a reinstated exemption takes effect within the county on the first day of the first calendar quarter after the expiration of the first complete calendar quarter after the date on which the comptroller receives notification of the order.

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. 35.

Sec. 323.209. TRANSITION EXEMPTION. (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 tax imposed by a county under this chapter if the items are used:

(1) for the performance of a written contract entered into before the date the tax takes effect in the county, 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 before the date the tax takes effect in the county, 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 tax takes effect in the county.  
Added by Acts 1989, 71st Leg., ch. 2, Sec. 14.17(a), eff. Aug. 28,  
1989.

#### SUBCHAPTER D. ADMINISTRATION OF TAXES

Sec. 323.301. COMPTROLLER TO COLLECT AND ADMINISTER TAXES. The comptroller shall administer, collect, and enforce any tax imposed by a county under this chapter. The tax 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. 323.302. COMPTROLLER'S REPORTING DUTIES. (a) The comptroller shall make quarterly reports to a county that has adopted the taxes authorized by this chapter if the county requests the reports. A report must include the name, address, and account number of each person in the county that has remitted to the comptroller a tax payment during the quarter covered by the report.

(b) If a county requests an additional report, the comptroller shall make an additional quarterly report to the county including the name, address, and account number, if any, of, and the amount of tax due from, each person doing business in the county who has failed to pay the tax under this chapter to the county 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 county determines that a person doing business in the county is not included in a comptroller's report, the county shall report to the comptroller the name and address of the person. Within 90 days after receiving the report from a county, the comptroller shall send to the county:

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

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

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

(d) The comptroller shall send by United States certified or registered mail to the county attorney a notice of each person who is delinquent in the payment to the county 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. 323.303. 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.

(c) The comptroller may prescribe the form of an exemption certificate for a prior contract exemption under this chapter.

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

Sec. 323.304. 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. 323.305. 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. 323.306. 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. 323.307. 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. 323.308. 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, any remainder to the amounts due to a municipality to which the taxes are due under Chapter 321, and any remainder to the amounts due to a county to which taxes are due.

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

Sec. 323.309. SUIT FOR TAX COLLECTION. (a) A county 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 county under this chapter.

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

(1) the taxes are certified by the comptroller in the notice required by Section 323.302(d);

(2) a written notice of the tax delinquency and the county'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. 323.310. DISAPPROVAL OF COUNTY SUIT. (a) The comptroller or the attorney general may disapprove of the institution of a suit by a county under Section 323.309(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 county 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 county 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 county collection suit, the county may again proceed as provided by Section 323.309(b) even though the liability of the taxpayer includes taxes for which the county 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. 323.311. JUDGMENTS IN COUNTY SUIT. (a) A judgment in a suit under Section 323.309(b) for or against a taxpayer does not affect a claim against the taxpayer by another county, a municipality, or the state unless the state is party to the suit.

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

(d) The county shall send to the comptroller for deposit in the county's suspense account the amount of any taxes collected on the judgment.

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

Sec. 323.312. RETENTION OF CERTAIN COUNTY SALES TAXES. A county 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 county collects and that constitutes the county's own tax. The county 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. 77, eff. Oct. 1, 2001.

#### SUBCHAPTER E. TAX ELECTION PROCEDURES

Sec. 323.401. CALLING OF ELECTION. (a) An election under this chapter is called by the adoption of an order by the commissioners court of a county.

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

(c) The commissioners court shall call the election if a number of qualified voters of the county equal to at least five percent of the number of registered voters in the county petitions for a vote on the question.

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

Sec. 323.402. DEADLINES AFTER PETITION. (a) After the receipt of a petition for an election under this chapter, the commissioners court shall determine the sufficiency of the petition within 30 days.

(b) If the petition is sufficient, the commissioners court 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. 323.403. TIME OF ELECTION. An election under this chapter must be held on the next uniform election day not less than 30 days after the day on which the order calling the election was passed.

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

Sec. 323.404. BALLOT WORDING. (a) Except as provided by Subsection (b), in an election to adopt the tax, the ballot shall be printed to provide for voting for or against the proposition: "Adoption of a one-half percent county sales and use tax within the county to be used to reduce the county property tax rate."

(b) In an election in a county that includes no territory within the limits of a municipality, the ballot shall be printed to

provide for voting for or against the proposition: "Adoption of a one percent county sales and use tax within the county to be used to reduce the county property tax rate."

(c) In an election to repeal the tax, the ballot shall be printed to provide for voting for or against the proposition: "Abolition of the county sales and use tax within the county."

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

Sec. 323.405. OFFICIAL RESULTS OF ELECTION. (a) Within 10 days after an election in which the voters of a county approve of the adoption or abolition of the tax authorized by this chapter, the commissioners court of the county shall, by resolution 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 county judge shall send to the comptroller by United States certified or registered mail a certified copy of the resolution.

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

Sec. 323.406. FREQUENCY OF ELECTION. An election under this chapter in a county may not be held earlier than one year after the date of any previous election under this chapter in the county.

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

Sec. 323.407. 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. 323.408. 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 county judge 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 county under this chapter, the tax or the abolition of the tax takes effect as provided by Section 323.102 except that the notice of the final judgment is substituted for the notice of election results prescribed by Section 323.405.

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

#### SUBCHAPTER F. REVENUE DEPOSIT, DISTRIBUTION, AND USE

Sec. 323.501. 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 county from which the taxes were collected.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(45).

(c) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(45).

(d) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(45).

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

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.126, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 285, Sec. 31(45), eff. Sept. 1, 2003.

Sec. 323.502. 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 county treasurer payable to the county the county'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. 323.503. STATE'S SHARE. Before sending any money to a county under this subchapter the comptroller shall deduct two

percent of the amount of the taxes collected within the county 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 323.501(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. 323.504. AMOUNTS RETAINED IN TRUST ACCOUNT. (a) The comptroller may retain in the suspense account of a county a portion of the county's share of the tax collected for the county under this chapter, not to exceed five percent of the amount remitted to the county. If the county has abolished the tax, the amount that may be retained may not exceed five percent of the final remittance to the county at the time of the termination of the collection of the tax.

(b) From the amounts retained in a county'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 county's tax under this chapter the comptroller shall send to the county the remainder of the money in the county's account and shall close the account.

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

Sec. 323.5041. INTEREST ON TAX REVENUE. Interest earned on all deposits made with the comptroller under this chapter, including interest earned from the suspense accounts retained under Section 323.504, shall be credited to the general revenue fund.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 14.18(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.127, eff. Sept. 1, 1997.

Sec. 323.505. USE OF TAX REVENUE. (a) The money received by a county under this chapter is for the use and benefit of the county and shall be used for the replacement of property tax revenue lost as a result of the adoption of the taxes authorized by this chapter. Except as provided by Subsection (b), the revenue in excess of the revenue used to replace those property taxes shall be used for the reduction of indebtedness of the county. After all indebtedness is paid, the excess may be used for any purpose for

which county general revenue may be used. A county may not pledge anticipated revenue from this source to secure the payment of bonds or other indebtedness for a period longer than one year.

(b) Revenue collected from the tax imposed under this chapter in each of the first three years in which the tax is imposed in the county 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 used only if and to the extent that taxes or other revenues of the county are collected in amounts less than anticipated. After that period, the revenue in the fund may be used for any purpose for which county general revenue may be used. The fund ceases to exist when all revenue deposited in the fund has been spent.

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

Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.18(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 17.07, eff. Aug. 26, 1991.