

Exempt Organizations: Sales and Purchases

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Organizations that have applied for and received a letter of exemption from sales tax don't have to pay sales and use tax when they buy, lease or rent taxable items that are necessary to the organization's exempt function.

For more information, visit our Web site www.window.state.tx.us. Receive tax help via e-mail at tax.help@cpa.state.tx.us.

Applying for Exempt Status

Various types of organizations are exempt from paying sales tax, state hotel occupancy tax and, if incorporated, franchise tax. The exemptions vary, depending upon the type of organization.

An organization can apply for exemption by using the appropriate application form as shown below. Our *Guidelines to Texas Tax Exemptions* (96-1045) gives more details on the categories and the application process.

Charitable – form AP-205

Educational – form AP-207

Religious – form AP-209

To apply as **any other** exemption type, use form AP-204.

* **Please note:** Homeowners' Associations can apply for a franchise tax exemption by completing AP-206. However, to qualify for exemption from sales tax, a homeowners' association must also be a qualifying 501C organization.

What can an exempt organization buy tax-free?

Sales and Use Tax

Organizations that have applied for and received a letter of exemption from sales tax don't have to pay sales and use tax when they buy, lease or rent taxable items that are necessary to the organization's exempt function. An authorized agent or employee can make a tax-free purchase for an exempt organization

by giving the vendor a completed exemption certificate. No item purchased tax-free by an exempt organization can be used for the personal benefit of a private party or other individual.

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

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

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

A sales tax exemption does not include taxes on the purchase, rental or use of motor vehicles.

A completed exemption certificate must be on the proper Comptroller form which can be found on the back page of this publication. Exemption certificates are available online at our Window on State Government Web site at <http://www.window.state.tx.us> or call the Comptroller's office toll free at (800) 252-5555 and ask for a copy of form 01-339.

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The retailer must either collect tax or accept, in good faith, a completed exemption certificate.

A government entity's purchase voucher is sufficient proof of exempt status. Foreign governments and most states are not exempt from Texas sales tax.

Motor Vehicle Sales and Use Tax

There are very limited exemptions from motor vehicle sales tax. Certain nonprofit emergency medical service providers and volunteer fire departments can buy fire trucks and emergency medical response vehicles tax-free, and churches do not have to pay tax when they purchase vans and buses used to take persons to and from services. A qualifying organization can claim the exemption when applying for the vehicle's title and registration. Motor vehicle purchases by other nonprofit organizations are taxable.

Hotel Occupancy Tax

Organizations that have received a letter of exemption from the Comptroller as a charitable, religious or educational organization are exempt from the state hotel occupancy tax. These organizations must still pay any applicable local hotel taxes. To claim this exemption, present a *Texas Hotel Occupancy Tax Exemption Certificate* to the hotel at the time of registration. Effective October 1, 2003, the hotel may require a copy of your exemption letter or verification, such as a printout from the Comptroller's Web site, showing the organization is exempt from hotel tax. A hotel exemption certificate form can be found online at our Window on State Government Web site at <http://www.window.state.tx.us> or call the Comptroller's office toll free at (800) 252-5555 and ask for a copy of form 12-302.

Should an exempt organization making sales collect sales tax?

Generally, an exempt organization must get a sales tax permit and collect and remit sales tax on all items it sells. The exemptions provided to exempt organizations are for their purchases, not on their sales, but there are some exceptions.

Tax-Free Sales

Meals and Food Products

An exempt organization does not have to collect sales tax on meals and food products (including candy and soft drinks) if:

- sold by churches or at church functions conducted under authority of a particular church;
- sold or served by a public or private school, school district, student organization or parent-teacher association in an elementary or secondary school during the regular school day by agreement with proper school authorities; or
- sold by a member or a volunteer of a nonprofit organization devoted exclusively to education or to physical or religious training, or by a group associated with private or public elementary and secondary schools as part of an organization's fund-raising drive, when all net proceeds from the sale go to the organization for its exclusive use.

Note: Alcoholic beverages are not food products and are taxable. Sales of alcoholic beverages made by the holder of a mixed beverage permit are subject to the 14 percent mixed beverage gross receipts tax. Sales of beer and wine made by the holder of a beer and wine only permit are subject to sales tax.

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Annual Banquets and Suppers

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

Auctions, Rummage Sales and Other Fund Raisers

Each chapter of an organization qualifying for sales tax exemption under the religious, educational or charitable category, as well as organizations exempted from sales tax based on their IRS Section 501 (c)(3), (4), (8), (10) or (19) status, can hold two one-day, tax-free sales or auctions each calendar year. During each one-day sale, the organization does not need to collect sales tax. For purposes of the exemption, one day is counted as 24 consecutive hours. The exemption does not apply to items sold for more than \$5,000 unless the item is manufactured by the organization, or the item is donated to the organization and not sold back to the donor.

Youth athletic organizations, volunteer fire departments and chambers of commerce cannot hold tax-free sales.

College or university student organizations affiliated with an institution of higher education can hold a one-day, tax-free sale each month. The organization must have a primary purpose other than engaging in business or performing an activity designed

to make a profit, and the purpose of the sale must be to raise funds for the organization. The exemption does not apply to items sold for more than \$5,000 unless the item is manufactured by the organization, or the item is donated to the organization and not sold back to the donor.

Senior Citizens Groups

Nonprofit senior citizens groups (persons aged 65 years and older) do not have to collect or remit sales tax on the items they make and sell, provided they do not have more than four sales per year lasting a total of no more than 20 days.

Amusement Services

Nonprofit organizations (other than IRS 501(c)(7) organizations) do not have to collect sales tax when they provide amusements, so long as the proceeds do not go to the benefit of an individual except as part of a purely public charity. See subsection (g) of Rule 3.298, Amusement Services.

Membership Dues and Fees

Nonprofit groups' membership dues and fees are tax-exempt. The exemption does not apply to nonprofit country clubs and similar organizations that provide amusement services.

Publications

Periodicals and writings are tax exempt if published and distributed by a religious, philanthropic, charitable, historical, scientific or IRS 501(c)(3) organization. The exemption does not extend to materials published by educational organizations.

An employee of an exempt organization cannot claim an exemption when buying taxable items of a personal nature, even if the organization gives an allowance or reimbursement for such items.

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TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

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

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

Seller: _____


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

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

Purchaser claims this exemption for the following reason:

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

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

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

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