

TAX CODE CHAPTER 158. MANUFACTURED HOUSING SALES AND USE TAX

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 158. MANUFACTURED HOUSING SALES AND USE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. SHORT TITLE. This chapter is known and may be cited as the "Manufactured Housing Sales and Use Tax Act."

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

Sec. 158.002. DEFINITIONS. In this chapter, "manufactured home," "manufacturer," "retailer," and "person" have the same meanings as they are given by Chapter 1201, Occupations Code. In addition, the term "manufactured home" also includes and means "industrialized housing" as defined by Chapter 1202, Occupations Code.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982. Amended by Acts 1985, 69th Leg., ch. 527, Sec. 2, eff. Aug. 26, 1985; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.818, eff. Sept. 1, 2003.

SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

Sec. 158.051. TAX IMPOSED. A tax is imposed on the initial sale in this state of every new manufactured home at the rate of five percent of the amount of the sales price determined as provided by Section 158.052 of this code.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982. Amended by Acts 1981, 67th Leg., p. 2757, ch. 752, Sec. 2(b), eff. Sept. 1, 1983.

Sec. 158.052. COMPUTATION OF TAX. The initial sale of a manufactured home occurs on the sale, shipment, or consignment by a manufacturer to a retailer or other person in this state. The tax rate is applied to 65 percent only of the sales price to be paid by the retailer or other person, as set forth in the actual invoice or

bill of sale. The sales price does not include any shipping, freight, or delivery charges for the manufactured home from the manufacturer to the retailer or other person if those charges are separately stated on the invoice or bill of sale.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

Sec. 158.053. COLLECTION OF TAX FROM RETAILER. Every manufacturer engaged in business in this state shall set forth the amount of the tax imposed on each manufactured home on the actual invoice or bill of sale and shall collect the amount of the tax from the retailer or other person to or for whom the manufactured home is sold, shipped, or consigned in this state. As used in this chapter, "manufacturer engaged in business in this state" includes the following:

(1) any manufacturer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, affiliate, or agent, by whatever name called, an office, manufacturing facility, place of distribution, warehouse, storage place, or other place of business; and

(2) any manufacturer having a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the manufacturer, or of its subsidiary, affiliate, or agent, for the purpose of selling, delivering, or the taking of orders for any manufactured home.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

Sec. 158.054. PERMITS. Every manufacturer engaged in business in this state shall file with the comptroller an application for a permit authorizing the manufacturer to sell, ship, or consign manufactured homes to persons in this state. The application must be on a form prescribed by the comptroller and contain the information that the comptroller requires. The application must be executed by the owner of a sole proprietorship, by an officer or partner of an association or partnership, or by an executive officer, or other person who is expressly authorized, of

a corporation. A manufacturer may not be issued a permit unless the manufacturer is duly licensed and bonded under Chapter 1201, Occupations Code.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.818, eff. Sept. 1, 2003.

Sec. 158.055. RECORDS. Every manufacturer selling, shipping, or consigning manufactured homes to or for any person in this state shall keep on file for audit purposes for the limitation period records showing:

(1) the identification number of each module or section of each manufactured home sold, shipped, or consigned;

(2) the name of the retailer or other person to whom or for whom the manufactured home was sold, shipped, or consigned and the address to which the home was delivered in this state; and

(3) the sales price of each manufactured home sold, shipped, or consigned.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

Sec. 158.056. REPORT AND TAX PAYMENT. (a) Each manufacturer shall send to the comptroller on or before the last day of each month a report showing the total sales prices of manufactured homes sold, shipped, or consigned to or for, any person in this state during the preceding month together with the taxes imposed by this chapter. The report shall be made in the form and manner required by the comptroller.

(b) Along with each monthly report, the manufacturer shall remit to the comptroller monthly the tax imposed by this chapter and due on manufactured homes during the reporting period.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

Sec. 158.057. USE TAX. (a) A use tax is imposed on the use or occupancy of a manufactured home in this state at the same rate as provided by this chapter on the initial sale of a new

manufactured home.

(b) "Use" includes the exercise of any right or power over a manufactured home incident to its ownership and includes the incorporation of any manufactured home into real estate or into improvements on real estate.

(c) If a sales or use tax has previously been paid on the manufactured home in any state, credit in the amount of the tax may be taken against any use tax due on the manufactured home under this chapter. If the sales tax imposed by this chapter has previously been paid to the manufacturer, no use tax is due or payable.

(d) The person to whom or for whom the manufactured home is sold, shipped, or consigned in this state is liable for, and shall pay the use tax on 65 percent of the sales price of the manufactured home as set forth in the actual invoice, bill of sale, or other document transferring title. It is presumed that the manufactured home was sold, shipped, or consigned for use or occupancy in this state. If a manufactured home has been registered or titled in another state for a period of at least one year, as shown by a certificate or document of title, it is presumed that the manufactured home was not purchased for use in this state and no use tax is due.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

Sec. 158.058. CREDIT OR REFUND FOR SALES TO NONRESIDENTS.

If the sales tax imposed by this chapter has previously been paid to the manufacturer by a retailer whose first sale at retail is to a resident of another state and if the manufactured home is transported to and installed on a homesite outside of this state and not titled or registered in this state, the retailer is entitled to a credit or refund of the tax previously paid under this chapter. No credit or refund is due or may be paid if any use or occupancy of the manufactured home occurred prior to the first sale at retail by the retailer.

Added by Acts 1983, 68th Leg., p. 464, ch. 96, Sec. 2, eff. May 10, 1983. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 2, eff. Sept. 1, 1985.

SUBCHAPTER C. EXEMPTIONS

Sec. 158.101. EXEMPTIONS. (a) There are exempted from the taxes imposed by this chapter the sales price of a manufactured home sold, shipped, or consigned to, or the use or occupancy of any manufactured home by:

(1) the United States or its unincorporated agencies or instrumentalities;

(2) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(3) this state or its unincorporated agencies or instrumentalities;

(4) any county, city or town, special district, or other political subdivision of this state; or

(5) any organization created for religious, educational, charitable, or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual, and provided that the use of the manufactured home is related to the purpose of the organization.

(b) If a person certifies in writing by using an exemption certificate that the person is exempt under this section and that the manufactured home will be used in a manner or for a purpose exempted from the tax, and the person then uses the manufactured home in another manner or for another purpose, the person is liable for the tax. The cost of the manufactured home to the person is the sales price for purposes of determining the amount of tax for which the person is liable.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.

SUBCHAPTER D. ENFORCEMENT

Sec. 158.151. PENALTIES. (a) If any person fails to file a report required by this chapter or fails to pay the tax imposed, when the report or payment is due, an amount equal to five percent of the tax due shall be forfeited as a penalty. After the first 30

days following the due date of any report or payment, an additional five percent of the amount of the tax shall be forfeited. A penalty may never be less than \$1. Delinquent taxes shall draw interest at the rate provided by Section 111.060, beginning 60 days from the due date.

(b) A person commits an offense if the person gives an exemption certificate to the seller for a manufactured home, and the person knows that the home will be used in a manner or for a purpose other than exempt purpose as defined by Section 158.101 of this code. An offense under this section is a Class A misdemeanor.

(c) A person commits an offense if the person claims a credit or refund by submitting false information as a basis for the claim. An offense under this section is a Class A misdemeanor.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982. Amended by Acts 1983, 68th Leg., p. 464, ch. 96, Sec. 3, eff. May 10, 1983; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 13.03, eff. Sept. 1, 1991.

Sec. 158.152. LIEN. The state has a lien on each new manufactured home installed for use and occupancy in this state for the collection and payment of the tax imposed by this chapter if the tax has not been set forth on the invoice or bill of sale on the initial sale and paid to the manufacturer by the retailer or other person to whom or for whom the manufactured home is sold, shipped, or consigned. The lien shall be filed with the county clerk of the county of this state in which such new manufactured home is installed for use and occupancy. In addition, the lien shall be filed and recorded with the Texas Department of Licensing and Regulation.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982. Amended by Acts 1989, 71st Leg., ch. 1039, Sec. 4.06, eff. Sept. 1, 1989.

Sec. 158.153. RULES. The comptroller shall adopt rules necessary for the implementation of the provisions of this chapter and for the collection of the taxes imposed by this chapter.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff.

March 1, 1982.

Sec. 158.154. OTHER TAXES. (a) All manufactured homes shall be taxed in accordance with the provisions of Title 1 of this code. A political subdivision of this state may not levy or collect any other tax on a manufactured home.

(b) Manufactured homes are not to be taxed as motor vehicles under Chapter 152 of this code and are not taxable items under Chapter 151 of this code.

(c) A part or an accessory added to a manufactured home by a retailer on which the sales tax is not paid to the manufacturer under this Chapter is subject to the tax imposed by Chapter 151 of this code, and the retailer shall pay the tax to the vendor of the part or accessory. If a retailer is a permitted taxpayer under Chapter 151 of this code and makes separate retail sales of the parts or accessories, a resale certificate may be issued in lieu of paying the tax at the time of purchase, and the tax shall be collected from the purchaser at retail; if the tax is not paid at the time of purchase, the retailer must accrue and remit the tax on each part and accessory which is later removed from inventory and added to a manufactured home.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982. Amended by Acts 1983, 68th Leg., p. 463, ch. 96, Sec. 1, eff. May 10, 1983.

Sec. 158.155. LIMITATION FOR COLLECTION AND REFUND. Subchapter D of Chapter 111 and Section 111.107 of this code apply to this chapter.

Added by Acts 1981, 67th Leg., p. 2754, ch. 752, Sec. 2(a), eff. March 1, 1982.