

TAX CODE CHAPTER 160. TAXES ON SALES AND USE OF BOATS AND BOAT MOTORS

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 160. TAXES ON SALES AND USE OF BOATS AND BOAT MOTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 160.001. DEFINITIONS. In this section:

(1) "Agent of the department" means an agent authorized under Section 31.006, Parks and Wildlife Code.

(2) "Boat" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(3) "Dealer or manufacturer" means a dealer or manufacturer as defined under Section 31.003, Parks and Wildlife Code, who has applied for and holds a current number under Section 31.041, Parks and Wildlife Code.

(4) "Department" means the Parks and Wildlife Department.

(5) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(6) "Retail sale" means a sale of an item other than a sale in which the dealer or manufacturer acquires the item for the exclusive purpose of resale.

(7) "Sale" includes:

(A) an installment and credit sale;

(B) an exchange of property for property or money;

(C) an exchange in which property is transferred but the seller retains title as security for payment of the purchase price; and

(D) any other closed transaction that constitutes a sale.

(8) "Tax assessor-collector" means a county tax assessor-collector.

(9) "Taxable boat or motor" means:

(A) a boat other than a canoe, kayak, rowboat,

raft, punt, or other vessel designed to be propelled by paddle, oar, or pole; or

(B) an outboard motor.

(10) "Seller-financed sale" means a retail sale of a taxable boat or boat motor in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the boat or boat motor until all payments have been received. The term does not include a retail sale of a taxable boat or boat motor in which a person other than the seller provides the consideration for the sale and retains a lien on the boat or boat motor as collateral.

(11) "Title" means the certificate of title document as provided for under Chapter 31, Parks and Wildlife Code.

(12) "Use" does not include the storage, display, or holding of an item exclusively for sale.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 587, Sec. 30, eff. Oct. 1, 1993; Acts 1993, 73rd Leg., ch. 718, Sec. 5, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(50), eff. Sept. 1, 1995.

Sec. 160.002. TOTAL CONSIDERATION. (a) "Total consideration" means the amount paid or to be paid for a taxable boat or motor, including accessories attached on or before the sale, without deducting:

- (1) the cost of the item;
- (2) the cost of material, labor or service, interest paid, loss, or any other expense;
- (3) the cost of transportation of the item before its sale; or
- (4) the amount of any manufacturer's or importer's excise tax imposed on the item by the United States.

(b) "Total consideration" does not include amounts separately stated on the bill or contract for the following:

- (1) a cash discount;
- (2) a full cash or credit refund to a customer of the sales price of the item returned to the seller;

(3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the item sold;

(4) a financing, carrying, or service charge or interest on credit extended on the item sold under a conditional sale or other deferred payment contract;

(5) the value of a taxable boat or motor taken by a seller as all or a part of the consideration for sale of the item; or

(6) a charge for transportation of the item after a sale.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.003. SUPERVISION. (a) The comptroller shall supervise the collection of the taxes imposed by this chapter and adopt rules for the determination of the taxable value of taxable boats and motors and the administration of this chapter.

(b) The comptroller shall furnish a copy of the rules to each tax assessor-collector, each agent of the department, and the department. Each tax assessor-collector and each agent of the department shall consistently apply the rules authorized by this section.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 6, eff. Sept. 1, 1993.

SUBCHAPTER B. IMPOSITION OF TAX

Sec. 160.021. RETAIL SALES TAX. (a) A tax is imposed on every retail sale of a taxable boat or motor sold in this state. The tax is an obligation of and shall be paid by the purchaser of the taxable boat or motor. If the purchaser pays the tax to the seller, the tax is an obligation of and shall be paid by the seller.

(b) The tax rate is 6-1/4 percent of the total consideration.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 243, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.022. USE TAX. (a) A use tax is imposed on a taxable boat or motor purchased at retail outside this state and used in this state or brought into this state for use by a Texas resident or other person who is domiciled or doing business in this state. The tax is an obligation of and shall be paid by the person who uses the boat or motor in this state or brings the boat or motor into this state.

(b) The tax rate is 6-1/4 percent of the total consideration.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.023. NEW RESIDENT. (a) A use tax is imposed on a new resident of this state who brings into this state for use in this state a taxable boat or motor that has been purchased and owned by the new resident in any other state or foreign country.

(b) The tax is \$15 for each taxable boat or motor.

(c) The tax imposed by this section is in lieu of the tax imposed by Section 160.022.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.024. EXEMPTION. The taxes imposed by this chapter do not apply to the sale of a taxable boat or motor or to the use of a taxable boat or motor by this state or its political subdivisions or the federal government.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.0245. EXEMPTION FOR EMERGENCY SERVICE ORGANIZATIONS. The taxes imposed by this chapter do not apply to the sale of a taxable boat or motor to or to the use of a taxable boat or motor by a volunteer fire department or other department, company, or association organized for the purpose of answering fire alarms and extinguishing fires or for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical

services, the members of which receive no compensation or only nominal compensation for their services rendered, if the boat or motor is used exclusively by the department, company, or association.

Added by Acts 2001, 77th Leg., ch. 190, Sec. 1, eff. May 21, 2001.

Sec. 160.025. CREDIT FOR OTHER TAXES. A person is entitled to a credit against the tax imposed by Section 160.022 on a taxable boat or motor in an amount equal to the amount of any similar tax paid by the person in another state on the sale, purchase, or use of the taxable boat or motor if the state in which the tax was paid provides a similar credit for a taxpayer of this state.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

SUBCHAPTER C. COLLECTION AND ENFORCEMENT OF TAXES

Sec. 160.041. COLLECTION PROCEDURE. (a) The department, each agent of the department, and each tax assessor-collector shall collect the taxes imposed by this chapter. The department, agent of the department, or tax assessor-collector of the county in which an application for a Texas certificate of number or certificate of title for a taxable boat or motor is made shall collect the taxes imposed by this chapter on that boat or motor.

(b) Except as provided by Subsection (d), the department, agent of the department, or the tax assessor-collector may not accept an application for a Texas certificate of number or certificate of title for a taxable boat or motor from a person unless the tax, if any, is paid.

(c) The tax imposed by Section 160.021 is due on the 20th working day after the date that the taxable boat or motor is delivered to the purchaser. The purchaser or the seller, if the purchaser paid the tax to the seller, shall pay the tax to the department, to an agent of the department, or to a tax assessor-collector on or before the due date.

(d) If a purchaser pays the tax imposed by Section 160.021 to the seller, and the seller fails to remit the tax in the time and manner required by Subsection (c), the department, agent of the

department, or county tax assessor-collector shall accept an application for a Texas certificate of number or certificate of title for a taxable boat or motor from the purchaser if the purchaser provides proof that the tax was paid to the seller. The comptroller shall adopt rules establishing the method of proof required.

(e) The tax imposed by Section 160.022 or 160.023 is due on the 20th working day after the date that the taxable boat or motor is brought into this state. The person liable for the tax shall pay the tax to the department or to a tax assessor-collector on or before the due date.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 7, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 243, Sec. 2, eff. Sept. 1, 1999.

Sec. 160.042. REQUIRED AFFIDAVITS. (a) A person obligated to pay a tax imposed by this chapter on a transaction shall file the affidavit as provided by this section with the department, agent of the department, or tax assessor-collector on payment of a tax imposed by this chapter.

(b) If a taxable boat or motor is sold by a person at a retail sale, the seller and purchaser shall make a joint affidavit stating the value in dollars of the total consideration for the boat or motor at the time of sale.

(c) If the ownership of a taxable boat or motor is transferred as a result of a gift, the donor shall make an affidavit stating the nature of the transaction.

(d) If the ownership of a taxable boat or motor is transferred as a result of an even exchange, the parties shall make a joint affidavit stating the nature of the transaction.

(e) The department, agent of the department, or the tax assessor-collector shall examine each affidavit for the purpose of determining the truth and accuracy of the information it contains. If the department, agent of the department, the tax assessor-collector, or the comptroller has reason to question the truth of the information in an affidavit, or if any material fact

fails to meet the rules adopted by the comptroller, the department, agent of the department, the tax assessor-collector, or the comptroller may require any party to the affidavit to furnish substantiation of information in the affidavit before accepting an application for a Texas certificate of number or certificate of title.

(f) The department, agent of the department, and the tax assessor-collector shall keep a copy of each affidavit and any substantiating materials until it is called for by the comptroller for auditing.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 8, eff. Sept. 1, 1993.

Sec. 160.043. PAYMENT BY SELLER. If the comptroller on an audit of the records of a seller finds that the amount of tax due was incorrectly reported on a joint affidavit and that the amount of tax paid was less than the amount due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the taxable boat or motor, the seller and purchaser are jointly and severally liable for the amount of the tax determined to be due.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.044. TAX RECEIPTS. (a) The comptroller shall prescribe the form of a tax receipt to be issued to a person paying a tax imposed by this chapter.

(b) The department, agent of the department, or tax assessor-collector collecting a tax imposed by this chapter shall:

(1) issue the original receipt to the person paying the tax; and

(2) retain one duplicate copy of the receipt as a permanent record of the transaction according to the rules of the comptroller.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 9, eff.

Sept. 1, 1993.

Sec. 160.045. PENALTY. (a) A person who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax before the 31st day after the date on which the tax is due, the person forfeits an additional five percent.

(b) The minimum penalty imposed by this section is \$1.
Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.046. RECORDS. (a) The seller of a taxable boat or motor shall keep at the seller's principal office for at least four years from the date of the sale a complete record of each sale of a taxable boat or motor. The record must include a copy of the invoice of each item sold. The invoice copy must show the full price of the taxable boat or motor and the itemized price of all its accessories. All sales and supporting records of a seller are open to inspection and audit by the comptroller.

(b) A seller's business records must show the total receipts from all sources of income and expense, including transactions involving taxable boats and motors.

(c) For a retail sale for which the seller receives full payment at the time of sale, the seller shall keep, at the seller's principal office for at least four years from the date of the sale, documentation of complete payment in the form of:

(1) a copy of the payment instrument or a receipt for cash received; and

(2) a copy of the receipt for title application, registration, and boat or boat motor tax issued by the county tax assessor-collector or the department or a written statement by the purchaser that:

(A) is signed and dated;

(B) indicates the date on which the seller provided to the purchaser each of the documents necessary to apply for the title, register the taxable boat or boat motor, and pay the boat or boat motor tax; and

(C) includes a statement that the seller advised the purchaser that the purchaser must pay a tax to the county tax assessor-collector or the department.

(d) For a seller-financed sale, the seller shall keep at the seller's principal office for at least four years from the date on which the seller receives the final payment for the taxable boat or motor:

(1) the lienholder's copy of the receipt for title application, registration, and boat or boat motor tax issued by a county tax assessor-collector or the department; and

(2) a ledger or other document containing a complete record of the payment history for that boat or boat motor, including:

(A) the name and address of the purchaser;

(B) the total consideration;

(C) the amount of the down payment received at the time the boat or boat motor is sold;

(D) the date and amount of each subsequent payment;

(E) the date of sale; and

(F) the date of any repossession.

(e) For a sale for resale, the seller shall keep, at the seller's principal office for at least four years from the date of the sale, the purchaser's written statement of resale on a form prescribed by the comptroller.

(f) Any person, other than the seller's employee, acting for the seller of a taxable boat or boat motor has the same record-keeping responsibilities as the seller.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 587, Sec. 31, eff. Oct. 1, 1993.

SUBCHAPTER D. PENALTIES

Sec. 160.061. OPERATION; PENALTY. (a) A person commits an offense if the person knowingly operates a taxable boat or motor in this state and the person knows that a tax imposed by this chapter on the boat or motor has not been paid and is delinquent.

(b) An offense under this section is a Class B misdemeanor.
Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

Sec. 160.062. PENALTY FOR SIGNING FALSE AFFIDAVITS. (a) A person commits an offense if the person signs a joint affidavit required by Section 160.042 and knows that it is false in any material fact.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$500.

Added by Acts 1993, 73rd Leg., ch. 587, Sec. 32, eff. Oct. 1, 1993.

SUBCHAPTER E. DISPOSITION OF TAXES

Sec. 160.121. AMOUNT OF TAX SENT TO COMPTROLLER.

(a) Except as provided by Subsections (b) and (c), on the 10th day of each month, each tax assessor-collector and the department shall send the money collected from taxes imposed by this chapter to the comptroller.

(b) A tax assessor-collector shall retain five percent of the taxes collected by the tax assessor-collector under this chapter as fees of office to be retained or paid into the appropriate county fund from which salaries are paid as provided by law and used to defray the costs of collection required under this chapter. As a minimum amount for the fees of office collectible, a tax assessor-collector is entitled to retain \$5 for each of the first 100 transactions processed in each fiscal year.

(c) Five percent of the taxes collected by the department under this chapter shall be deposited to the credit of the game, fish, and water safety account and used by the department for the administration of this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 67, eff. Sept. 1, 1993.

Sec. 160.122. ALLOCATION OF REVENUE. The revenue from the taxes imposed by this chapter from a sale of a taxable boat or motor shall be allocated to the general revenue fund.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct.
1, 1991.