

TAX CODE CHAPTER 322. SALES AND USE TAXES FOR SPECIAL PURPOSE TAXING
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TAX CODE

TITLE 3. LOCAL TAXATION

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CHAPTER 322. SALES AND USE TAXES FOR SPECIAL PURPOSE TAXING

AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. APPLICATION OF CHAPTER. (a) This chapter applies to the imposition, assessment, collection, administration, and enforcement of a sales and use tax imposed under Chapter 451, 452, 453, or 460, Transportation Code.

(b) The effective dates and rates of the taxes imposed by a taxing entity are determined under the laws authorizing the adoption of the taxes.

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

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.266, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 56, eff. Oct. 1, 2003.

Sec. 322.002. DEFINITIONS. In this chapter:

(1) "Taxing entity" means a rapid transit authority, a regional transit authority, including a subregional transportation authority, or a municipal mass transit department created under Chapter 451, 452, or 453, Transportation Code, or a coordinated county transportation authority created under Chapter 460, Transportation Code, that has adopted a sales and use tax under the law authorizing the creation of the entity.

(2) "Entity area" means the geographical limits of a taxing entity.

(3) "Municipal sales and use tax" means a sales and use tax imposed by a municipality under the Municipal Sales and Use Tax Act (Chapter 321) within an entity area.

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

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.267, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 57, eff. Oct. 1, 2003.

SUBCHAPTER B. ASSESSMENT AND COMPUTATION OF TAXES

Sec. 322.101. SALES TAX. There is imposed in a taxing entity a sales tax at the rate authorized and set as provided by the law authorizing the creation of the taxing entity and applied to the receipts from the sale within the entity area of all taxable items that are subject to the sales tax under Chapter 151.

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

Sec. 322.102. USE TAX. In a taxing entity, there is imposed an excise tax on the use, storage, and other consumption within the entity area of taxable items purchased, leased, or rented from a retailer during the period that the sales tax is effective within the entity area. The rate of the excise tax is the same rate as the rate of the sales tax imposed by the taxing entity and is applied to the sales price of the taxable item.

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

Sec. 322.103. COMPUTATION OF SALES TAXES. (a) Each retailer in an entity area shall add the sales tax imposed under this chapter, the sales taxes imposed under Chapter 151, and, if applicable, any sales taxes imposed under Chapter 321 or 323 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 is one-half of one cent or more, the fraction shall be collected as one cent.

(c) 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 applicable tax rates.

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

Sec. 322.104. COMPUTATION OF USE TAX. (a) In each taxing entity the tax imposed by Subchapter D, Chapter 151, the tax imposed under Section 321.104(a), if applicable, and the tax imposed under Section 322.102 are added together to form a single combined tax rate, except in a situation described by Section 322.105(b).

(b) The formula prescribed by Section 322.103(b) applies to the computation of the amount of the tax under this section.

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

Sec. 322.105. USE TAX: WHERE USE OCCURS. (a) In determining the incidence of the use tax of a taxing entity, the name of the taxing entity 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 of a taxing entity on the use, storage, or other consumption of a taxable item does not apply if the item is first used, stored, or consumed in an area other than an entity area.

(b) If a sale of a taxable item is consummated within this state but not within an entity area and the item is shipped directly or brought by the purchaser or lessee directly into an entity area, the item is subject to the entity's use tax. The use is considered to be consummated at the location where the item is first used, stored, 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, the item is subject to the use tax of the taxing entity 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) Repealed by Acts 2007, 80th Leg., R.S., Ch. 823, Sec. 1(1), eff. September 1, 2007.

(e) With respect to a taxable service, "use" means the derivation in the taxing entity 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 1989, 71st Leg., ch. 2, Sec. 14.21(a), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 705, Sec. 29, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 823, Sec. 1(1), eff. September 1, 2007.

Sec. 322.106. TAX INAPPLICABLE WHEN NO STATE TAX; EXCEPTIONS. (a) The sales tax of a taxing entity does not apply to the sale of a taxable item unless the sales tax imposed under Subchapter C, Chapter 151, also applies to the sale.

(b) The excise tax of a taxing entity 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 of the item.

(c) Subsection (b) does not apply to the application of the tax in a situation described by Section 322.105(b).

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

Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 30, eff. Sept. 1, 1991.

Sec. 322.108. CERTAIN PROVISIONS OF MUNICIPAL SALES AND USE TAX APPLICABLE. (a) Except as provided by Subsection (b), the following apply to the taxes imposed by this chapter in the same manner as applicable to a municipality under Chapter 321:

- (1) Section 321.002(a)(3);
- (2) Section 321.003;
- (3) Section 321.203;
- (4) Section 321.205(d);
- (5) Section 321.208;
- (6) Section 321.209;
- (7) Section 321.303;
- (8) Section 321.304; and
- (9) Section 321.305.

(b) The provisions of this chapter applicable to a taxing entity created under Chapter 453, Transportation Code, prevail over any inconsistent provision in a statute listed in Subsection (a).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.20(a), eff. Aug. 28,
1989; Acts 1997, 75th Leg., ch. 165, Sec. 30.268, eff. Sept. 1,
1997.

Sec. 322.109. TELECOMMUNICATIONS EXEMPTION. (a) There are exempted from the taxes imposed by a taxing entity under this chapter the sales within the entity area of telecommunications services unless the application of the exemption is repealed under this section. A taxing entity may not repeal the application of this exemption as it applies to interstate long-distance telecommunications services, but if a taxing entity 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 taxing entity are not subject to taxes imposed under this chapter.

(b) Except as provided by Subsection (d), the board of a taxing entity may, by a majority vote of the board in the manner required for the adoption of other orders, repeal the application of the exemption provided by Subsection (a) for telecommunications services sold within the city.

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

(d) The governing board of a taxing entity created under Chapter 451, Transportation Code, may not repeal the application of the exemption provided by Subsection (a) unless the repeal is first approved by a majority of the members of the governing body of each municipality that created the taxing entity. A reinstatement of the exemption must be approved in the same manner.

(e) A vote of a taxing entity board repealing the application of or reinstating the exemption must be entered in the minutes of the entity. The entity board chairman or secretary 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 entity 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 a copy 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. 34; Acts 1999, 76th Leg., ch. 1008, Sec. 1, eff. June 18, 1999.

Sec. 322.110. TRANSITION EXEMPTION IN CERTAIN TAXING ENTITIES. (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 under this chapter by a taxing entity created under Chapter 453, Transportation Code, if the items are used:

(1) for the performance of a written contract entered into before the date the tax takes effect in the taxing entity, 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 taxing entity, 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 taxing entity.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 14.19(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.269, eff. Sept. 1, 1997.

SUBCHAPTER C. ADMINISTRATION OF TAXES

Sec. 322.201. COMPTROLLER TO COLLECT AND ADMINISTER TAXES.

(a) The comptroller shall administer, collect, and enforce the sales and use tax of a taxing entity.

(b) The sales and use taxes imposed under this chapter, the taxes imposed under Chapters 321 and 323, and the taxes imposed under Chapter 151 shall be collected together to the extent that each is imposed in an entity area.

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

Sec. 322.202. COMPTROLLER'S REPORTING DUTIES. (a) The comptroller shall report to a taxing entity on the entity's sales and use taxes by making substantially the same reports that are required to be made by the comptroller to a municipality under Sections 321.302(a), (b), and (c).

(b) The comptroller shall send to a taxing entity by United States certified or registered mail a notice of each person who is delinquent in the payment of the entity's sales and use taxes and shall send to the attorney general a copy of the notice. 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. 322.203. COMPTROLLER'S RULES. The comptroller may adopt reasonable rules and prescribe forms that are consistent with this chapter for the administration, collection, and enforcement of this chapter and for the reporting of the taxes imposed under this chapter.

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

Sec. 322.204. DELINQUENT TAXES: LIMITATIONS. The limitations for the bringing of a suit for the collection of a sales and use tax imposed by a taxing entity or a penalty due on the tax after the tax and penalty are delinquent or after a determination against a taxpayer are the same as the limitations provided by Chapter 151.

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

Sec. 322.205. SEIZURE AND SALE OF PROPERTY. (a) 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 under this chapter, Chapter 151, and Chapter 321.

(b) The proceeds of the sale of seized property shall first be applied to the payment of amounts due the state, then to the

payments of amounts due a municipality under Chapter 321, and the remainder, if any, to the payment of amounts due to the taxing entity to which the taxes are due.

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

Sec. 322.206. SUITS FOR TAX COLLECTION. (a) A taxing entity 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 taxing entity under this chapter.

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

(1) the taxes are certified by the comptroller in the notice required by Section 322.202(b);

(2) a written notice of the tax delinquency and the entity'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. 322.207. DISAPPROVAL OF SUIT. (a) The comptroller or the attorney general may disapprove of the institution of a suit by a taxing entity under Section 322.206(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 taxing entity 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 taxing entity 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 taxing entity collection suit, the taxing entity may again proceed as provided by Section 322.206(b) even though the liability of the taxpayer includes taxes for which the entity 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. 322.208. JUDGMENTS IN SUIT. (a) A judgment in a suit under Section 322.206(b) for or against a taxpayer does not affect a claim against the taxpayer by a municipality or the state unless the state is party to the suit.

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

(d) The taxing entity 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.

SUBCHAPTER D. REVENUE DEPOSIT, DISTRIBUTION, AND USE

Sec. 322.301. COLLECTIONS HELD BY COMPTROLLER. The comptroller shall deposit, hold, account for, and transmit sales and use taxes collected under this chapter for each taxing entity in the same manner as required under Section 321.501 for each municipality.

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

Sec. 322.302. DISTRIBUTION OF TRUST FUNDS. At least quarterly during each state fiscal year and as often as feasible,

the comptroller shall send to the person at each taxing entity who performs the function of entity treasurer, payable to the taxing entity, the entity'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.

Amended by Acts 1989, 71st Leg., ch. 16, Sec. 5, eff. Aug. 31, 1989;

Acts 1997, 75th Leg., ch. 165, Sec. 30.270, eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 1467, Sec. 2.68, eff. Oct. 1, 1999.

Sec. 322.303. STATE'S SHARE. Before sending any money to a taxing entity under this subchapter, the comptroller shall deduct two percent of the amount of the taxes collected within the entity area during the period for which a distribution is made as the state's charge for its services under this chapter and shall credit the money deducted to the general revenue fund.

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

Sec. 322.304. AMOUNTS RETAINED IN TRUST ACCOUNT. (a) The comptroller may retain in the suspense account of a taxing entity a portion of the entity's share of the tax collected for the entity under this chapter, not to exceed five percent of the amount remitted to the entity. If the entity has abolished the tax, the amount that may be retained may not exceed five percent of the final remittance to the entity at the time of the termination of the collection of the tax.

(b) From the amounts retained in an entity'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 an entity's tax under this chapter other than a department under Chapter 453, Transportation Code, the comptroller shall send to the entity the remainder of the money in the entity's account and shall close the account.

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

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.271, eff. Sept. 1, 1997.

Sec. 322.305. INTEREST ON TRUST ACCOUNTS. Interest earned on all deposits made with the comptroller under this chapter, including interest earned on retained 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. 19.125, eff. Sept. 1, 1997.

Sec. 322.306. RETENTION OF CERTAIN SPECIAL PURPOSE DISTRICT SALES TAXES. A taxing entity 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 taxing entity collects and that constitutes the entity's own tax. The taxing entity 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. 76, eff. Oct. 1, 2001.