

IV. Sales Taxes

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What's Taxable and What's Not?

In Texas, vendors must collect sales tax on certain types of food products as well as most non-food items, such as crafts.

Generally, Texas sales tax does not apply to sales of food products. There are, however, important exceptions to this rule. Notably, food is taxable in Texas if sold or packaged for immediate consumption. Food products on which sales tax must be collected include:

- food prepared for consumption on site;
- food prepackaged and sold “to go”;
- ice;
- candy;
- bottled water and soft drinks;
- food sold in a heated state;
- unheated food if facilities for heating food are provided to customers on the premise;
- food sold with eating utensils provided;
- food sold at a concession stand; and
- two or more food ingredients mixed or combined by the vendor for sale as a single item, unless the only action taken by the vendor was to cut, repackage or pasteurize the product.

Food for immediate consumption does not include fresh fruits and vegetables unless some preparation has been taken that makes them immediately edible. The sale of a watermelon, for example, would not be taxable. The sale of sliced watermelon, however, would be taxable because it can be eaten without any further action. Similarly, the sale of apples, flour, eggs, milk and sugar as individual items should not be subject to sales tax. The sale of an apple pie prepared by the vendor, however, would be subject to sales tax.

Most other goods that are capable of being sold are taxable. This would include many goods frequently sold at farmers' markets, including:

- craft items;
- clothing;
- furniture;
- household or garden goods;
- plants and seeds; and
- other property that can be “seen, weighed, measured, felt, touched, or that is perceptible to the senses.”

Only cultural artifacts of an Indian tribe that are made by a member of the tribe and sold within the boundaries of land held by the tribe are exempt from sales taxes. All other sales made on the reservation are taxable.

Who's Taxable and Who's Not?

In general, purchasers of taxable items are subject to Texas and local sales tax. Vendors, however, are responsible for collecting the tax from the purchasers and remitting the taxes to the state. Vendors who are sole proprietors are also responsible for collecting and remitting these taxes.

Charitable, religious and governmental entities, however, are exempt from sales and use taxes in certain instances when purchasing goods related to the purpose of the organization. In order to claim this exemption, the organization must obtain an exemption certificate from the Texas Comptroller of Public Accounts and provide a copy of the certificate to the vendor at the time the purchase is made. It is very important that vendors selling taxable items to exempt organizations maintain copies of the exemption certificates and records relating to the sale for audit and review by the Comptroller. Items sold to tribal councils or businesses owned by a tribal council are exempt from sales tax.

What Is the Sales Tax Rate in Texas?

The state sales tax in Texas currently is set at 6.25%. In addition, cities, counties, special purpose districts and metropolitan transit authorities may levy additional taxes on goods sold in the jurisdiction. At present, these supplemental taxes collectively may not exceed 2% in total (for a total sales tax of no more than 8.25%).

Information on what sales taxes must be collected in a particular location can be obtained from the Texas Comptroller of Public Accounts (phone: 800-252-5555, Internet: <http://cpa.state.tx.us/taxinfo/sales>, email: tax.help@cpa.state.tx.us).

What Are a Vendor's Responsibilities When Collecting Sales Taxes?

Before collecting sales tax, a vendor must obtain sales and use tax permit from the Texas Comptroller of Public Accounts. Applications for sale and use tax permits can be obtained at the Comptroller's website (<http://cpa.state.tx.us/taxinfo/sales>) or by calling the Comptroller's office at 800-252-5555. There is no fee for a permit, but the Comptroller may require that a vendor post a security bond based upon anticipated sales. The Comptroller's office can provide a vendor with more information about whether a bond will be required. Vendors doing business as sole proprietors must also file Assumed Name or DBAs with the county clerk if operating under a business name.

It is important to note that vendors must obtain separate sales and use tax permit for each place of business where they sell their goods. A farmer, for example, who sells produce both at his house and at two local farmers' markets will need to obtain a different sales and use tax permit for each of the three locations. Permits are not transferable and, if a business or location is sold, the new owner will need to obtain his or her own sales and use tax permits.

Vendors selling taxable goods must keep records relating to the collection of sales and use taxes for four years. These records are subject to review and audit by the Comptroller. Vendors should consider writing receipts for each sale to ensure more accurate record-keeping.

What Are a Vendor's Responsibilities After Collecting Sales Taxes?

Once a vendor collects sales tax, the vendor is responsible for filing a sales and use tax return with the Texas Comptroller of Public Accounts and sending the collected taxes to the Comptroller. Returns must be filed even if no sales tax has been collected.

In 2006, vendors who collect more than \$500 in sales taxes in a month must file monthly returns. Vendors who collect less than \$500 of sales taxes a month (or less than \$1500 per quarter) may file quarterly returns. Vendors who collect \$1000 or less in sales taxes a year may file yearly returns. Returns are due on the 20th day of the month following the end of the return period (i.e., February 20th for taxes collected in January if the vendor is a monthly filer or April 20th for first quarter taxes if the vendor is a quarterly filer).

Along with the return, vendors must send collected taxes to the Comptroller. In most cases, these payments can be made by mail to the address designated by the Comptroller, in person at one of the Comptroller's local enforcement offices or by electronic funds transfer. However, the Comptroller requires vendors who paid more than \$100,000 a year in sales and use taxes in the preceding year to make payments only by electronic funds transfer.

The Comptroller's office will attempt to mail preprinted tax return forms to vendors at the end of each reporting period. Return forms also are available from the Comptroller's website (<http://cpa.state.tx.us/taxinfo/sales>) or by calling 800-252-1389.