

Texas Administrative Code

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.286	Seller's and Purchaser's Responsibilities

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(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Engaged in business—A retailer is engaged in business in Texas if the retailer:

(G) conducts business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller—For tax permit requirement purposes, the term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items.

(3) Seller—Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration.

(b) Permits required.

(1) Each seller must apply to the comptroller and obtain a tax permit for each place of business.

(2) Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a tax permit. An out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in the Tax Code, §151.053. Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for \$.07, then the seller must collect the tax on the total sum of \$.14. Tax must be reported and remitted to the comptroller as provided by the Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(h) Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or

equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See §3.305 of this title.

(i) Resale and exemption certificates.

(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out-of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.

(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller of the seller's duty to deliver certificates to the comptroller.

(j) Suspension of permit.

(1) If a person fails to comply with any provision of the Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.287	Exemption Certificates

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(a) Definition. Exemption certificate—A document that, when properly executed, allows the tax-free purchase of an item that would otherwise be subject to tax. A purchaser claiming an exemption because the item purchased is for resale must issue a resale certificate to the seller. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). There is no provision in the sales and use tax act for an exemption number or a tax exempt number to be issued or used in connection with an exemption certificate.

(b) Who may issue an exemption certificate. An exemption certificate of the type described in this section may only be issued by one of the following:

- (1) an organization that has qualified for exemption under the Tax Code, §151.309 or §151.310. See §3.322 of this title (relating to Exempt Organizations);
- (2) a person purchasing an item that is exempt under the Tax Code, Chapter 151, Subchapter H.

c Maquiladora exemption and direct payment permits.

- (1) People who make purchases using direct pay permits should refer to §3.288 of this title (relating to Direct Payment Procedures and Qualifications).
- (2) People who make purchases using maquiladora exemption permits should refer to §3.358 of this title (relating to Maquiladoras).

(d) Acceptance of exemption certificate.

- (1) All gross receipts of a retailer are subject to sales or use tax unless a valid and properly completed exemption certificate is accepted by the seller.
- (2) A sale is exempt if the exemption certificate is accepted in good faith at the time of the transaction and the seller lacks actual knowledge that the claimed exemption is invalid.
- (3) A person who intentionally or knowingly makes, presents, uses, or alters an exemption certificate for the purpose of evading the Texas sales or use tax is guilty of a criminal offense.
  - (A) If the tax evaded by the invalid certificate is less than \$20, the offense is a Class C misdemeanor.
  - (B) If the tax evaded by the invalid certificate is \$20 or more but less than \$200, the offense is a Class B misdemeanor.
  - (C) If the tax evaded by the invalid certificate is \$200 or more but less than \$750, the offense is a Class A misdemeanor.
  - (D) If the tax evaded by the invalid certificate is \$750 or more but less than \$20,000, the offense is a felony of the third degree.
  - (E) If the tax evaded by the invalid certificate is \$20,000 or more, the offense is a felony of the second degree.

(4) The seller should obtain the properly executed exemption certificate at the time the transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted.

(5) The exemption certificate will be valid if the seller received it in good faith from a purchaser and if the certificate states valid qualifications for an exemption. A retailer must be familiar with the exemptions that are available for the

items the retailer sells. A retailer may accept a blanket exemption certificate given by a purchaser who purchases only items that are exempt. For information on blanket exemption certificates received for agricultural exemptions, see §3.296 of this title (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer).

(6) An exemption certificate is not acceptable when an exemption is claimed because tangible personal property is exported outside the United States. For proper documentation required for proof of export, see §3.323 of this title (relating to Imports and Exports) and §3.360 of this title (relating to Customs Brokers).

(e) Improper use of items purchased under an exemption certificate.

(1) When an item purchased under a valid exemption certificate is used in a taxable manner, whether the use is in Texas or outside the state, the purchaser is liable for payment of sales tax based on the value of the tangible personal property or taxable service for the period of time used. If the exemption certificate was invalid at the time of its issuance, the purchaser owes tax on the original purchase price.

(2) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(3) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(4) At any time the person using tangible personal property or a taxable service purchased under a valid exemption certificate may stop paying tax on the value of tangible personal property or the value of a taxable service and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid based on value.

(5) Sales tax is not due when an item purchased under a valid exemption certificate is donated to an organization exempt from tax under the Tax Code, §151.309 or §151.310(a)(1) or (2), provided the purchaser does not use the donated tangible personal property or the donated taxable service.

(6) Contractors using equipment purchased under a valid exemption certificate on both taxable and exempt projects must account for tax based upon the provisions in §3.291 of this title (relating to Contractors).

(f) Content of an exemption certificate. An exemption certificate must show:

- (1) the name and address of the purchaser;
- (2) a description of the item to be purchased;
- (3) the reason the purchase is exempt from tax;
- (4) the signature of the purchaser and the date; and
- (5) the name and address of the seller.

(h) Form of an exemption certificate. An exemption certificate must be in substantially the form of a Texas Sales and Use Tax Exemption Certification that the comptroller adopts by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 West 6<sup>th</sup> Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621).

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.285	Resale Certificate; Sales for Resale

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(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mexico—Within the geographical limits of the United Mexican States.

(2) Sale for resale—A sale of:

(A) tangible personal property to a purchaser who acquires the property for the purpose of reselling it in the United States or Mexico in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or as an integral part of other tangible personal property;

(B) tangible personal property to a purchaser who acquires the property for the sole purpose of leasing or renting it in the United States or Mexico to another person, but not if incidental to the leasing or renting of real estate;

(C) tangible personal property to a purchaser who acquires the property for the purpose of transferring care, custody, and control of the property to a customer in the United States or Mexico as an integral part of a taxable service;

(D) a taxable service to a purchaser who obtains the service for the purpose of reselling it in the United States or Mexico in the normal course of business as an integral part of a taxable service; or

(E) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service.

(3) United States—Within the geographical limits of the United States of America or within the territories and possessions of the United States of America.

(b) Acceptance of resale certificate.

(1) A sale for resale as defined in subsection (a)(2) of this section is not taxable. All gross receipts of a seller are subject to sales or use tax unless a properly completed resale or exemption certificate is accepted by the seller. A properly completed resale certificate contains the information required by subsection (g) of this section. See also §3.287 of this title (relating to Exemption Certificates).

(2) A sale is exempt if the resale certificate is accepted in good faith and the seller lacks actual knowledge that the sale is not a sale for resale. It is the seller's responsibility to take notice of the type business generally engaged in by the purchaser as shown on the resale certificate.

(3) A resale certificate may be signed by a purchaser at the time of purchase if the purchaser intends to resell, lease, or rent the taxable item or transfer it as an integral part of a taxable service in the regular course of business.

(4) The seller should obtain a properly executed resale certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller.

C Blanket resale certificate. A blanket resale certificate describing the general nature of the taxable items purchased for resale may be issued to a seller by a purchaser who purchases only items for resale. The seller may rely on the blanket certificate until it is revoked in writing.

(d) Retailers outside Texas.

(1) A seller in Texas may accept a resale certificate in lieu of tax from a bona fide retailer located outside Texas who purchases taxable items for resale as defined in subsection (a) of this section.

(2) The resale certificate must show the signature and address of the purchaser, the state to which the property is taken for resale, the sales tax permit number, if any, or the registration number assigned to the purchaser by the purchaser's home state. Mexican retailers who purchase taxable items for resale must show their Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of their Mexican Registration Form to the Texas seller. An invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold must be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business. A resale certificate may be accepted from the bona fide out-of-state retailer even if the Texas retailer ships or delivers the taxable item directly to a

recipient located inside Texas.

(3) The Texas retailer is not responsible for determining whether the out-of-state retailer is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(f) Improper use of a resale certificate.

(1) A person may not issue a resale certificate at the time of purchase for a taxable item if the person knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax is guilty of a criminal offense.

(A) If the tax evaded by the invalid certificate is less than \$20, the offense is a Class C misdemeanor.

(B) If the tax evaded by the invalid certificate is \$20 or more but less than \$200, the offense is a Class B misdemeanor.

(C) If the tax evaded by the invalid certificate is \$200 or more but less than \$750, the offense is a Class A misdemeanor.

(D) If the tax evaded by the invalid certificate is \$750 or more but less than \$20,000, the offense is a felony of the third degree.

(E) If the tax evaded by the invalid certificate is \$20,000 or more, the offense is a felony of the second degree.

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1, 2, or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale. See also subsection (d)(2) of this section regarding registration numbers for retailers outside Texas;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially either in the form of a Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate. The comptroller adopts both certificates by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 W. 6<sup>th</sup> Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.281	Records Required; Information Required

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(a) Persons who must keep records.

- (1) Sellers of taxable items and purchasers who store, use, or consume taxable items in this state shall keep books, papers, and records in the form that the comptroller requires.
- (2) Examples of persons who are required to keep records include the following:
  - (A) a person who sells, leases, or rents tangible personal property;
  - (B) a person who performs taxable labor, such as fabricating, processing, and producing tangible personal property;
  - (C) a person who performs taxable services that are listed in Tax Code, §151.0101; or
  - (D) a person who purchases taxable items.

(b) Records required.

- (1) Records must reflect the total gross receipts from sales, rentals, leases, taxable services, and taxable labor. Examples include, but are not limited to, receipts, shipping manifests, invoices, and other pertinent papers from each rental, lease, taxable service, and each taxable labor transaction that occurs during each reporting period.
- (2) Records must reflect total purchases of taxable items. Examples include, but are not limited to, receipts, shipping manifests, invoices, and other pertinent papers of all purchases of taxable items from every source that are made during each reporting period.
- (3) Additional records must be kept to substantiate any claimed deductions or exclusions authorized by law. Examples include, but are not limited to, receipts, shipping manifests, invoices, exemption certificates, resale certificates, and other pertinent papers that substantiate each claimed deduction or exclusion.
- (4) Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller may readily examine.

C Failure to keep accurate records. If a person who is required to keep records under subsection (a) of this section fails to keep accurate records of gross receipts, gross purchases, deductions, and exclusions, the comptroller may take actions that include, but are not limited to, the following:

- (1) estimate the person's tax liability based on any available information that includes, but is not limited to, records of suppliers;
- (2) use a sample and projection auditing method to calculate the person's tax liability. For further information, see §3.282 of this title (relating to Auditing Taxpayer Records);
- (3) suspend the person's permit;
- (4) file criminal charges against a person who intentionally and knowingly alters or fails to keep records. For further information, see §3.305 of this title (relating to Criminal Offenses and Penalties); and
- (5) take other action as authorized by law to enforce compliance with the Tax Code.

(e) Retention. A person who is required to keep records under subsection (a) of this section must keep those records for a minimum of four years from the date on which the record is made, unless the comptroller authorizes in writing a shorter retention period. A person must keep exemption and resale certificates for a minimum of four years following the completion of the last sale that is covered by the certificate.

(f) The comptroller or the comptroller's authorized representative may examine, copy, and photograph any records of any person who is required to keep records under subsection (a) of this section, to verify the accuracy of any return or to determine any tax liability. However, during an audit, an auditor for the comptroller should obtain permission from a taxpayer to copy or photograph records that are proprietary in nature, unless the comptroller reasonably believes that the taxpayer may have committed fraud or taken action to evade taxes. If the taxpayer does not grant the auditor permission to copy or photograph records, and the comptroller believes that the records are necessary to determine the tax liability of the taxpayer, then the comptroller may obtain records through other means under authority granted by Tax Code, §111.0043.





Texas Administrative Code	
TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.323	Imports and Exports

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(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Air forwarder—A licensed International Air Transportation Association freight forwarder.

(2) Consignee—The person named in a bill of lading to whom or to whose order the bill promises delivery.

(3) Consignor—The person named in a bill of lading as the person from whom the goods have been received for shipment.

(4) Licensed and certificated carrier—A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle, or pipeline as a common or contract carrier. Certificates of inspection or airworthiness certificates are not the appropriate documents for authorizing a person to operate as a common or contract carrier. These documents relate to the carrier device itself rather than a person's right to operate a carrier business.

(5) Licensed customs broker—A person who is licensed by the United States Customs Service to act as a custom house broker and who holds a Texas Customs Broker's License issued by the comptroller as provided in §3.360 of this title (relating to Customs Brokers).

(6) Ocean forwarder—A licensed Federal Maritime Commission freight forwarder.

(b) United States Constitution. On the basis of the import and export clause of the United States Constitution, Article 1, §10, clause 2, tangible personal property imported into or exported from Texas is exempt from taxation by the Tax Code, §151.307 and §151.330, so long as the property retains its character as an import or export.

### C Exports.

(1) When an exemption is claimed because tangible personal property is exported beyond the territorial limits of the United States, proof of export may be shown only by:

(A) a copy of a bill of lading issued by a licensed and certificated carrier of persons or property that shows the seller as consignor, the buyer as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation that is valid under §3.360 of this title (relating to Customs Brokers) provided by a licensed customs broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the property was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized, certified number issued by Mexican customs officials, or an alternative type of formal entry document also used by Mexican customs officials, such as the boleta;

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier that describes the property being exported and a copy of the air forwarder's, ocean forwarder's, or rail freight forwarder's receipt if an air, ocean, or rail freight forwarder takes possession of the property in Texas; or

(E) a maquiladora exemption certificate issued by an organization of the type defined in §3.358 of this title (relating to Maquiladoras). The maquiladora must also provide a copy of its maquiladora export permit issued by the comptroller.

(2) The retailer is responsible for obtaining proof of exportation. Only one type of proof relating to a particular piece of property is necessary. For example, a furniture store sells a table and collects sales tax. The purchaser returns to the store a week later with a valid pedimento de importaciones showing that the table was imported into Mexico. The retailer may accept the pedimento, alone, as proof of export and refund the tax. It is not necessary for the retailer to also obtain an export certification form issued by a licensed customs broker. Except as provided in §3.358 of this title (relating to Maquiladoras), exemption certificates, affidavits, or statements from the purchaser that the property will be or has been exported are not sufficient to exempt the sale as an export. The Texas proof of export form, which differs from the certification form provided by a licensed Texas customs broker as provided in §3.360 of this title (relating to Customs Brokers), is no longer acceptable as proof of export. A passport number taken by a seller from a passport issued by a foreign country is not acceptable as proof of export. For information concerning resale certificates given by Mexican

retailers, see §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(3) Storing property in Texas by the owner prior to exportation is a use of that property in Texas. Property stored or otherwise used or consumed in Texas by the owner loses its exemption as an export. For example, clothing or jewelry actually worn by the purchaser in Texas is used in Texas; automotive parts (not including electronic audio equipment) installed on the purchaser's motor vehicle in Texas are used in Texas if the vehicle is subsequently driven in Texas; and food ready for immediate consumption that is purchased in Texas is presumed to be used in Texas. By law, electronic audio equipment retains the exemption even if installed in a motor vehicle that is driven in Texas prior to export. Sufficient time will be allowed to arrange for shipping. Property in Texas longer than 30 days from date of purchase will be presumed to have been stored. Any use of the property in Texas by the owner prior to export also causes the loss of the export exemption. Property in the hands of a freight forwarder is not covered by this provision.

(4) The sale of property to military personnel is taxable unless proof of export is maintained as outlined in paragraph (1) of this subsection.

(5) If a seller delivers property to a purchaser in Texas, the seller must collect tax at the time of sale unless the sale is exempt for a reason other than export and the seller accepts a properly completed resale or exemption certificate. Tax may not be refunded until the property has actually been exported from the territorial limits of the United States and the seller has received valid proof of export as described in this subsection. There is a rebuttable presumption that an export certification form issued by a licensed customs broker who complies with §3.360 of this title (relating to Customs Brokers) is valid. Tax not collected will be assessed against the seller. This paragraph does not apply when proof of export is provided to the seller at the time of sale by a maquiladora according to the terms of paragraph (1)(E) of this subsection.

(d) Imports. Property imported into Texas from another country is exempt from Texas use tax as long as the property retains its character as an import. When transit ceases in Texas, the import becomes subject to the Texas use tax.

(e) Refunds.

(1) A retailer who collects sales tax on tangible personal property that qualifies for exemption under subsection (b) of this section may refund the tax to the original purchaser or the original purchaser's assignee upon receipt of export documentation as required by subsection (c) of this section.

(2) A retailer who receives documentation that is valid under subsection ©(1)(B) may not refund the tax paid under this chapter on that purchase before:

(A) the 24<sup>th</sup> hour after the hour stated as the time of export on the documentation, if the retailer is located in a county that borders the United Mexican States; or

(B) the seventh day after the day stated as the date of export on the documentation, if the retailer is located in a county that does not border the United Mexican States.

(3) The refund may be made by certified check, company check, money order, credit memo, or cash. If the refund is made in cash, the retailer must receive at the time the refund is made a receipt showing a description of the property purchased, the amount and date of the refund, and the name, address, and signature of the purchaser and, if applicable, the purchaser's assignee. A retailer who issues a tax refund to the purchaser's assignee must also receive a copy of the purchaser's written assignment of the right to a refund. A retailer who makes a refund before the time prescribed by (e)(2)(A) or (B) of this section or makes a refund that is undocumented or improperly documented is liable for the tax refunded plus interest.

(4) A copy of the certified check, company check, money order, or credit memo, and a copy of the written assignment of the purchaser's right to a refund, if applicable, must be attached to the original export documents and maintained in the seller's files.

(5) In an audit, the auditor must be able to tie the export documents to the original taxable transaction. The seller must retain the original invoice of the sale. Cash register receipts and other records of the original taxable transaction that do not include a detailed, specific description of the items purchased are not sufficient to tie the export documents to the original taxable transaction. Refunds made pursuant to undocumented or improperly documented export exemptions will be assessed against the seller.

(f) Records. Please refer to §3.281 of this title (relating to Records Required; Information Required), §3.282 of this title (relating to Auditing Taxpayer Records), and §3.360 of this title (relating to Customs Brokers).



Texas Administrative Code	
TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.358	Maquiladoras

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(a) Maquiladora enterprise. Maquiladora enterprise means a business entity chartered by the government of the United Mexican States and authorized by that government to make duty-free imports of raw materials, component parts, or other property into Mexico to be used in manufacturing, processing, or assembling items by the business entity in Mexico primarily for export from Mexico.

(e) Tax-free purchases. A maquiladora export permit holder may make tax-free purchases of goods for export to Mexico. To claim the exemption, the purchaser must give the supplier:

- (1) a blanket maquiladora exemption certificate; and
- (2) a copy of their maquiladora export permit issued by the comptroller of public accounts.

(i) Form of certificate. A maquiladora exemption certificate must be substantially in the form set out as follows.

Attached Graphic

State of Texas  
Maquiladora Exemption Certificate  
Limited Sales, Excise, and Use Tax

Purchaser's Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Maquiladora export permit number \_\_\_\_\_

The undersigned hereby claims exemption from the payment of state and local taxes upon its purchases of taxable items for export to Mexico from:

Seller: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

This certificate will remain in effect until the seller is otherwise notified and does not cover purchases of taxable items to be resold in the form in which they are purchased.

The undersigned agrees to accrue and pay the tax to the Comptroller of Public Accounts on any goods purchased under this certificate that are not exported to Mexico prior to their use.

This certificate is not valid unless accompanied by a copy of the Maquiladora Export Permit issued by the Comptroller of Public Accounts.

Authorized Signature: \_\_\_\_\_

Typed or printed name of person signing certificate: \_\_\_\_\_

Date: \_\_\_\_\_

Texas Administrative Code	
TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.360	Customs Brokers

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(2) Licensed customs broker - A person who is licensed by the United States Customs Service to act as a custom house broker and who holds a Texas Customs Broker's License issued by the comptroller as provided for in this section.

(b) Certification of exports. Only a licensed customs broker or an employee of a licensed customs broker may fully or partially prepare, issue, and/or sign a valid export certification form as provided for in this section and in §3.323 of this title (relating to Imports and Exports). A retailer who receives documentation that is valid under this section certifying that delivery was made to a point outside of the territorial limits of the United States should refer to §3.323(e) for information regarding refunds.

(i) Export certification stamps. The comptroller will produce or have produced export certification stamps to be affixed to export certification forms.

(1) The comptroller may change the design as often as necessary for the enforcement of this section. The design will be changed at least once each calendar quarter.

(m) Export certification form and contents. The export certification forms issued by a licensed customs broker must be substantially in the form recommended by the comptroller. A separate form must be completed for each seller. Multiple invoices from a single seller may be listed on a single export certification form only if all the listed items were exported at the same place, on the same date, and at the same time. The required information must be completed in English on the face of the form, in addition to any other language in which the form is completed. The comptroller may immediately confiscate from any person an export certification form that is incomplete on its face, indecipherable, fraudulent, or otherwise in violation of this section. An export certification form must, at a minimum, reflect the following information:

- (1) the name and address of the purchaser of the property, as shown on the invoice, receipt, or similar document;
- (2) the name of the seller and the seller's location from which the property was sold;
- (3) the name, address, and Texas Customs Broker's License number of the broker in whose name the export is being certified;
- (4) the date of sale, date and time the property was exported, and exact location (e.g., the bridge or airport) where the property was exported;
- (5) a description of the property, a list of Store Keeping Unit (SKU) or other product identification codes, or copies of invoices securely attached to the form and signed and dated individually by the broker or the broker's authorized employee;
- (6) the invoice numbers (if any) and sales prices of the property;
- (7) the original signature of the licensed customs broker or the broker's employee, together with a certification that the property has been exported;
- (8) the name of the person who signed the form, typed or legibly printed near the signature;
- (9) a valid export certification stamp whose expiration date falls within the same calendar quarter as the date of export (regardless of the date of sale); and
- (10) a sequential export certification form number assigned by the licensed customs broker.

T34S3.360(o)

Affix export certification stamp here:

Certification No. \_\_\_\_\_

STATE OF TEXAS  
LICENSED CUSTOMS BROKER'S EXPORT CERTIFICATION

\_\_\_\_\_  
Customs Broker name

\_\_\_\_\_  
Texas Customs Broker's License number

\_\_\_\_\_  
Customs Broker address

\_\_\_\_\_  
Purchaser name

\_\_\_\_\_  
Purchaser address

\_\_\_\_\_  
Seller name

\_\_\_\_\_  
Date of sale

\_\_\_\_\_  
Seller address where goods were purchased

\_\_\_\_\_  
Description of Merchandise Exported

\_\_\_\_\_  
Invoice Number

\_\_\_\_\_  
Quantity

\_\_\_\_\_  
Description

\_\_\_\_\_  
Sales Price

\_\_\_\_\_  
Export location

\_\_\_\_\_  
Date and time of export

I declare that I am a licensed Texas Customs Broker or an authorized employee of a licensed Texas Customs Broker and I certify that the merchandise above was exported from the location and at the date and time specified.

Please print the name of the person signing this form below:  
\_\_\_\_\_

\_\_\_\_\_  
Sign here

\_\_\_\_\_  
Customs Broker or authorized employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Original - Seller

\_\_\_\_\_  
Copy - Customs Broker

\_\_\_\_\_  
Copy - Purchaser

Texas Administrative Code	
TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER O	STATE SALES AND USE TAX
RULE §3.322	Exempt Organizations

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(a) General policy. This section is administered using the following guiding principles:

(1) Because exemptions are not favored under the laws of the State of Texas, the provisions of this section shall be strictly interpreted.

(2) An organization must show by clear and convincing evidence that it meets the requirements of this section and the statutes. Any unresolved question about the qualifications of an organization will result in denial of exempt status.

(b) Entities that must prove exempt status. Entities or organizations that may qualify for exempt status include:

(1) a nonprofit charitable or eleemosynary organization that devotes all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, it cannot qualify for exemption under this provision because it is not organized for purely public charity. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the definition of charitable organization, even if the nonprofit organizations perform services that are often charitable in nature, are as follows: fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Although these organizations do not qualify for exemption as charitable organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the Internal Revenue Service (IRS) under the Internal Revenue Code (IRC), §501(c). Chambers of Commerce may qualify under paragraph (6) of this subsection;

(2) a nonprofit educational organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum that uses the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities that solely consist of presentation of discussion groups, forums, panels, lectures, or other similar programs, may qualify for the exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. An organization cannot qualify for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Although these organizations do not qualify for exemption as educational organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the IRC, §501(c);

(3) a nonprofit religious organization that is an organized group of people who regularly meet for the primary purpose of holding, conducting, and sponsoring religious worship services according to the rites of their sect. The organization must be able to provide evidence of an established congregation that shows regular attendance of these services by an organized group of people. An organization that supports or encourages religion as an incidental part of its overall purpose, or one whose general purpose is to further religious work or instill its membership with a religious understanding, cannot qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary



organizations, and groups that organize for the purpose of holding prayer meetings, Bible study, or revivals. Although these organizations do not qualify for exemption as religious organizations, they may qualify for an exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the IRC, §501(c);

(4) a youth athletic organization that is a nonprofit corporation or association that exclusively provides athletic competition among persons under 19 years of age;

(5) a nonprofit organization that applies for and obtains a determination letter or a group exemption ruling letter from the IRS that states that the organization qualifies for exemption from federal income tax under the IRC, §501©(3), (4), (8), (10), or (19);

(6) a nonprofit chamber of commerce that represents at least one Texas city, county, or geographic locality. For the purpose of this section, a chamber of commerce is a perpetual organization devoted exclusively to promoting the general economic interest of all commercial enterprises in the city, county, or areas it represents. The term does not include chamber-like organizations such as trade associations or business leagues that serve a single line or closely related lines of business within a single industry;

(7) a nonprofit convention and tourist promotional agency organized or sponsored by at least one Texas city or county;

(8) an electric cooperative formed under the Electric Cooperative Corporation Act (Utilities Code, Chapter 161) and nonprofit electric cooperatives located outside the state;

(9) a telephone cooperative formed under the Telephone Cooperative Act (Utilities Code, Chapter 162) and nonprofit telephone cooperatives located outside the state; and

(10) a local organizing committee that is exempt from federal income tax under the IRC, §501©. The local organizing committee must be authorized by an endorsing municipality to pursue an application and submit a bid on the municipality's behalf to a site selection organization for selection as the host site of the 2007 Pan American Games or the 2012 Olympic Games.

© Entities always exempt. The following entities and organizations are exempt under the law and are not required to request and prove exempt status except to send information as requested by the comptroller to verify its exempt status under this subsection:

(1) the United States, its unincorporated agencies and instrumentalities;

(A) The United States includes all parts of the executive, legislative, and judicial branches and all independent boards, commissions, and agencies of the United States government.

(B) Instrumentalities and agencies of the United States include:

(i) various military entities under the supervision of a base commander;

(ii) organizations that contract with the United States and whose contracts explicitly and unequivocally state that they are agents of the United States;

(iii) organizations wholly owned by the United States or wholly owned by an organization that is itself wholly owned by the United States; and

(iv) organizations specifically named as agents of the United States or exempted as instrumentalities of the United States by federal statutes.

© Instrumentalities and agencies of the United States also include organizations having substantially all of the following characteristics:

(i) they are funded by the United States;

(ii) they carry out a specific program of the United States;

(iii) they are managed or controlled by officers of the United States;

(iv) their officers are appointed by the United States;

(v) they perform commitments of the United States under an international treaty; and

(vi) they are not organized for private profit.

(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. "Wholly owned" means total or 100% ownership;

(3) federal credit unions organized under 12 United States Code, §1768;

(4) the State of Texas, its unincorporated agencies and instrumentalities;

(5) any county, city, special district or other political subdivision of the State of Texas, and any college or university created or authorized by the State of Texas;

(6) any company, department, 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 nominal or no compensation for their services;

(7) nonprofit corporations formed under the Development Corporation Act of 1979 or the Health Facilities Development Act of 1981 when they purchase items for their exclusive use and benefit. The exemption does not apply to items purchased by the corporation to be lent, sold, leased, or rented. See §3.291 of this title (relating to Contractors); and

(8) nonprofit corporations established by the Texas National Research Laboratory Commission under Government Code, §465.008(g). Taxable items purchased or leased from these corporations are also exempt from tax if the items are used in or for carrying out an eligible undertaking as defined by Government Code, §465.021.