



BULLETIN

Susan Combs, Texas Comptroller of Public Accounts

Guidelines for Collecting Local Sales and Use Tax

INSIDE THIS BULLETIN

Types of Local Taxing Entities p. 2

Jurisdictional Boundaries and Combined Areas p. 2

Which Tax to Collect – Sales Tax or Use Tax? p. 3

Local Sales Tax p. 3

- One Place of Business
- More Than One Place of Business
- Orders Received at a Place of Business in Texas; Products Delivered by a Third Party Vendor Located Outside Texas (i.e., “Drop Shipments”)
- Traveling Salespersons
- Itinerant Vendors
- Temporary Places of Business

Local Use Tax p. 7

- “Engaged in Business” – Who Must Collect Local Use Tax
- Length of Use Tax Collection Responsibility
- Do Not Collect More Than 2 Percent
- Products Delivered from Inside Texas: One Place of Business
- Products Delivered from Inside Texas: More Than One Place of Business

Collecting Use Tax for Drop Shipments p. 9

- Orders Placed at Seller’s Place of Business in Texas, Products Delivered from Seller’s Out-of-State Location
- Orders Placed With a Seller Located Outside Texas; Products Delivered from Within Texas
- Orders Received by a Salesperson Located Outside Texas, Products Delivered from Within Texas

Internet Sales p. 10

Exceptions p. 11

- Amusement Services
- Cable TV
- Contractors with Separated Contracts for New Construction and for Residential Repair and Remodeling Projects
- Florists
- Landline Telecommunications
- Mobile Telecommunications
- Natural Gas and Electricity
- Nonresidential Real Property Repair and Remodeling
- Waste Collection Services

If you sell taxable items (tangible personal property or taxable services), you must collect state sales or use tax and the appropriate local sales or use taxes. Usually, local taxes apply to the same goods and services as the state tax, but there are exceptions. This publication is intended to assist sellers with their tax-collection responsibilities.





Types of Local Taxing Entities

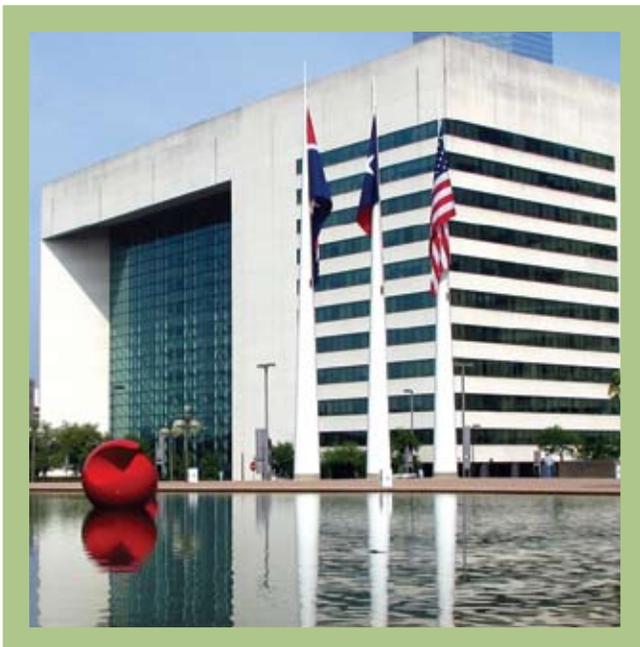
There are four types of local taxing entities:

Cities – Incorporated cities (including towns and villages) may impose sales and use tax at a rate of up to 2 percent.

Counties – Approximately half of the counties in Texas impose sales and use tax. County sales tax rates range from 0.5 to 1 percent.

Special Purpose Districts – Special purpose districts (SPD) are taxing entities created to generate revenue for a specific reason such as crime control, libraries or emergency services. SPD sales and use tax rates range from 0.125 to 2 percent.

Transit Authorities – Transit authorities include jurisdictions such as metropolitan transit authorities (MTA), city transit departments (CTD), county transit authorities (CTA) and advanced transportation districts (ATD). Transit jurisdictions may impose sales and use tax at rates ranging from 0.25 percent up to 1 percent.



Jurisdictional Boundaries and Combined Areas

City sales tax jurisdictional boundaries cannot overlap one another. Therefore, a city cannot impose a city sales tax in an area that is already within the jurisdiction of another city.

If a county imposes a sales tax, the tax applies to all locations within that county.

However, different types of taxing entities may cross or share boundaries, and boundaries for transit authorities and special purpose districts may encompass several cities and/or counties. Most urban areas, and many suburban areas, have two or more types of local taxing jurisdictions in effect in the same geographical area. For example, businesses located inside the city limits of Corpus Christi are within the boundaries of three types of local sales and use tax jurisdictions: the City of Corpus Christi, the Corpus Christi Regional Transit Authority and the Corpus Christi Crime Control and Prevention District.

Boundaries often cross ZIP codes and streets. For example, in some situations, a business located on one side of a street will be within the boundaries of different taxing jurisdictions than a business located on the other side of the street. Two businesses located next door to each other may actually be in different jurisdictions. There are situations where businesses are bisected by two local taxing authorities. A portion of the business is physically located within one jurisdiction, while another portion is located outside of the jurisdiction. In those situations, the location of the cash register determines which local sales taxes are collected.

Moreover, there are several areas in the state where a portion of a city or a special purpose district overlaps another taxing jurisdiction. The combined total local tax rate in these areas technically exceeds the 2 percent cap as explained below, but the Tax Code allows



LOCAL SALES AND USE TAX BULLETIN

Guidelines for Collecting Local Sales and Use Tax

the Comptroller to make certain determinations to maintain a 2 percent rate in these combined areas. The jurisdictions with competing boundaries share the tax revenue generated in the combined areas.

For example, Wise County imposes a 0.5 percent county sales tax. When Fort Worth annexed a small portion of Wise County, the county tax rate added to the other Fort Worth local rates exceeded the 2 percent cap. By creating a combined area using the special provisions in the law, the 2 percent cap was maintained. Sellers use a unique code to report sales subject to the combined area rate, and Fort Worth and Wise County each receive a percentage of that revenue.

If a seller does business in one of these areas, it must use the combined area local code when reporting sales and use taxes instead of the regular city or special purpose district code.

Which Tax to Collect – Sales Tax or Use Tax?

Sales tax collections are usually based on the location of the seller's place of business; *use* tax collections are based on the *customer's* location.

Specific rules are detailed below, but remember two general rules. First, a seller can collect no more than 2 percent in total local sales and use tax for all applicable jurisdictions, as explained further below. Second, if a seller collects a *sales* tax for a city, county, special purpose district or transit authority, the seller cannot collect a *use* tax for another local taxing jurisdiction of the same type. A seller may, however, collect more than one transit or special purpose district sales tax or multiple transit or special purpose district use taxes in relation to the same sales transaction. For example, a seller located in the city of San Antonio should collect sales tax for two transit authorities: the San Antonio ATD and the San Antonio MTA. Likewise,

a seller in Baytown (Chambers County) should collect sales tax for three special purpose districts: the Chambers County Health Services SPD, the Baytown Fire Control, Prevention and Emergency Medical Services District and the Baytown Crime Control and Prevention District.



Local Sales Tax

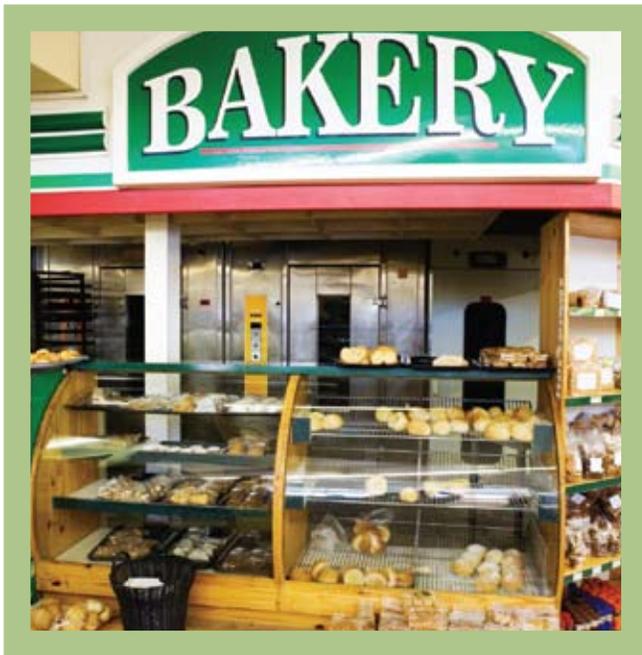
If the seller delivers the taxable goods or services sold to Texas customers from an out-of-state location, or from a warehouse or distribution center that is not a place of business as defined below, skip this section and refer to the section on use tax.

Other than the exceptions listed below, local *sales* taxes are collected based on the location of the *seller's place of business*.



A “place of business” is a store, office or other location operated for the purpose of receiving orders for taxable goods or services. A manufacturing plant, warehouse or other location not operated for the purpose of receiving orders for taxable items is not a place of business, unless three or more sales are made there, or orders are taken there, during a year.

In addition to collecting local sales taxes based on its place of business, a seller might be required to collect local *use* taxes for other local taxing jurisdictions. For additional information, see the section on use tax.



One Place of Business

If the seller’s only place of business is in a local city, county special purpose district, and/or transit authority taxing jurisdiction, sales tax is collected for those jurisdictions on *all* sales of taxable items made to customers in Texas.

For example, if a seller’s only place of business is in Bastrop, the applicable local sales taxes due are Bastrop city sales tax of 1.5 percent and Bastrop County sales

tax of 0.5 percent on all sales of taxable items delivered in Texas. If a seller’s place of business is in Uvalde, the applicable local sales taxes due are Uvalde city sales tax of 1 percent, Uvalde county sales tax of 0.5 percent and Uvalde SPD sales tax of 0.5 percent on all sales of taxable items shipped or delivered in Texas.

Note that in the above examples concerning Bastrop and Uvalde, no additional local tax can be collected on these transactions because the 2 percent cap has been reached.

If, however, a seller’s place of business is in Driftwood, the applicable local sales taxes due are Dripping Springs SPD sales tax of 0.25 percent and Hays County sales tax of 0.5 percent on all sales of taxable items made in Texas. Therefore, since the seller is not collecting a full 2 percent of local sales tax, the seller may be required to collect up to an additional 1.25 percent of local city or transit use tax at the point of delivery. (See the section on use tax.)

More Than One Place of Business

When a seller has more than one place of business in Texas, the local tax collected is determined by the place of business from which the items are *shipped*, not the location where the order is received. If the seller ships items from a place of business in a taxing jurisdiction, local sales tax must be collected for that jurisdiction.

For example, assume a seller has one place of business in El Paso and another place of business in Fort Worth. A customer places an order at the place of business in El Paso for delivery in El Paso, but the goods are shipped from the seller’s place of business in Fort Worth.

Based on these facts, Fort Worth **city sales** tax of 1 percent is due, but there is no applicable **county** sales tax to collect because neither Tarrant County nor Denton County (where Fort Worth is located) has a local sales and use tax. Fort Worth **SPD sales** tax of .5 percent and the Fort Worth MTA sales tax of



.5 percent are also due because Fort Worth is where the good were shipped, even though the order is received in El Paso and the goods are shipped to an address in El Paso. Note that in this example, no additional local *use* tax can be collected because the 2 percent cap has been reached.

Orders Received at a Place of Business in Texas; Products Delivered by Third Party Vendor Located Outside Texas (“Drop Shipments”)

If a seller receives an order at a place of business in Texas, and the taxable goods or services are delivered to Texas customers by a third party supplier located outside of Texas, the seller must collect local sales tax based on the place of business where the order was received. For example, assume a seller operates a place of business in Round Rock and receives an order from a customer for an item that must be ordered from a supplier located outside of Texas. The seller receives payment for the item from the customer. The seller instructs the supplier to ship the item directly to the customer’s location in Texas rather than shipping it to the seller’s place of business. Based on these facts, the seller should collect local sales taxes based on its place of business in Round Rock, which is the place of business where the order was *received*.

If a seller receives an order at a place of business in Texas, and the taxable goods or services sold are delivered to the customer in Texas from *the seller’s* place of business located outside of Texas or from *the seller’s* warehouse, distribution center or other location outside Texas (even if it is not a place of business that takes orders), the seller must collect local use tax based on where the product is *delivered*. For more information, see the section on use tax and drop shipments.

Traveling Salespersons, Itinerant Vendors and Temporary Places of Business

Different rules for collecting local taxes apply to traveling salespersons, itinerant vendors (i.e., sellers with no place of business) and people operating temporary places of business.

Traveling salespersons

For Texas sales and use tax purposes, traveling salespersons are people who operate from a seller’s place of business *in Texas* and go to customers’ locations to solicit sales. They generally do not carry inventory ready for immediate sale but may carry samples and demos with them. Traveling salespersons receive orders from customers at various locations throughout the state and then transmit the order information to the seller’s place of business for processing.

If a traveling salesperson receives an order, and delivery or shipment is made from a location within Texas which is not a place of business of the Texas retailer, local sales tax is due based on the *retailer’s place of business from which the salesperson operates*.

For example, assume a Texas retailer has one place of business in Lufkin, a salesman that operates out of that location who travels throughout Texas soliciting sales and a warehouse in New Braunfels that is not a place of business from which all orders are shipped. Based on these facts, all orders received by the salesman





LOCAL SALES AND USE TAX BULLETIN

Guidelines for Collecting Local Sales and Use Tax

should be considered made from the place of business in Lufkin. Therefore, the seller must collect 1.5 percent sales tax for the Lufkin city sales tax jurisdiction and .5 percent sales tax for Angelina County (where Lufkin is located) on all sales made by the traveling salesperson shipped from the New Braunfels warehouse.

If an order is received by a traveling salesperson and delivery or shipment is made from a place of business of the Texas retailer, local sales tax is due based on the retailer's place of business from which the item is *shipped*, regardless of the place of business from which the salesperson operates.

For example, assume a seller has two places of business in Texas, one in Lufkin and one in New Braunfels, and a traveling salesperson based out of Lufkin. Based on these facts, local sales tax is due based on the place of business from which the orders are shipped. So, if the traveling salesperson takes an order in Mission and the item is shipped from the New Braunfels place of business, then New Braunfels city sales tax is collected on the sale, plus either Guadalupe County or Comal

County sales tax, depending on the exact location of the seller's place of business in the city of New Braunfels. No local tax is collected based on the place of business in Lufkin, even though the salesperson is based out of that place of business.

In addition, note that a business with traveling salespersons is considered to be *engaged in business* in all locations where the salespersons have made sales calls. Therefore, the seller may be responsible for collecting local use taxes in addition to local sales taxes on transactions such as the ones above. (See section on use tax.)

Itinerant Vendors

A seller who does not operate a place of business in Texas and who travels to various locations in this state to solicit sales is an "itinerant vendor." Itinerant vendors collect tax for all local taxing jurisdictions in Texas where deliveries are made or where the customer takes possession.

For example, if a person sells rugs from a truck in San Antonio, then the seller must collect all applicable local San Antonio sales taxes on each sale: San Antonio city, MTA and ATD sales taxes.

If a seller does not operate a place of business in Texas, has salespersons who travel throughout the state soliciting sales and has orders shipped from a location outside of Texas, then no local *sales* tax is due; only local *use* tax is due based on the point of delivery. (See section on Use Tax.)

Temporary Places of Business

A "temporary place of business" is a location that is established for the purpose of receiving orders and making sales for a limited period of time. For example, a booth at a craft fair or art show is a temporary place of business. When a seller operates a temporary place of business, local sales taxes must be collected for the taxing jurisdictions in effect at that location on all taxable items transferred to customers at the time of the sale.





LOCAL SALES AND USE TAX BULLETIN

Guidelines for Collecting Local Sales and Use Tax

For example, assume a seller has a place of business in Blanco selling jewelry on a regular basis. The seller decides to participate in a craft show in Hutto selling taxable items at a temporary place of business. For Texas sales and use tax purposes the seller is considered to be operating a place of business in Hutto and is required to collect all applicable local sales taxes in effect at that location on all sales made there. The fact that the seller's business activities in Hutto are temporary and that the usual place of business is located outside of Blanco, does not affect the seller's responsibilities for collecting the Hutto local sales taxes.

If the seller receives an order at a temporary location that is later filled and shipped from the seller's store in Blanco, then local sales taxes are based on the place of business from which the item is shipped and not the temporary location where the order was received. Using the example above, assume that a customer orders a special piece of jewelry that the seller does not have in stock at the temporary place of business in Hutto. The seller later ships the item to the customer from Blanco. In this case, the seller should collect the Blanco local sales taxes and not the Hutto taxes, even though the order and payment was received in Hutto.

Local Use Tax

Local use tax is collected based on where the customer receives the goods or services: the point of delivery. Texas sellers may be required to collect local use taxes if they are engaged in business in the local taxing jurisdictions in effect at the point of delivery unless the 2 percent cap for local taxes would be exceeded.

"Engaged in Business" – Who Must Collect Local Use Tax

If a seller of taxable items has any of the following within a local jurisdiction or does any of the following within a local jurisdiction, then the seller is engaged in business in that jurisdiction and may be required to collect local use tax on taxable goods or services delivered into that jurisdiction.

Locations

This includes permanent and temporary locations, whether operated by the retailer directly or through an agent. It may be an office, warehouse, distribution center, storage place, sales or sample room, temporary booth or any other place of business.



Sales Representatives

This includes agents, salespersons, canvassers, solicitors and independent salespersons operating on behalf of direct sales companies. A representative includes a seller or other company that accepts returns of merchandise purchased from an affiliate or related business entity. (See section on Internet sellers for additional information.)



Make Deliveries

The use of company vehicles (whether owned, leased or rented) to deliver taxable items to customers in the taxing jurisdiction means a seller is engaged in business there.



Leased Equipment

If a seller derives income from the lease of equipment or other tangible personal property in the taxing jurisdiction, the seller is engaged in business there.

Provide Services

This includes services provided by company employees or authorized service agents, including subcontractors.

Length of Use Tax Collection Responsibility

Once a seller engages in business in a local taxing jurisdiction, the applicable local *use* tax for that jurisdiction must be collected (when possible) for 12 months after the seller was last engaged in business there.

Do Not Collect More Than 2 Percent

Two important rules must be remembered when collecting local use tax. First, a seller cannot collect more than a total of 2 percent combined local sales and use taxes. If an applicable type of local use tax cannot be collected at its full rate without going over the 2 percent maximum, even if the use tax is technically due, the seller cannot collect it. Second, the seller must collect applicable local use taxes in the following order by type of tax, making sure not to collect the same type of use tax already collected as sales tax on the same transaction:

1. City
2. County
3. Special purpose districts
4. Transit tax

One way to think about applying these rules is to first collect all applicable local sales tax relating to the sale of the taxable item, which will never be more than 2 percent. Then, if the 2 percent cap was not reached by collecting all applicable sales taxes, collect any applicable use tax in the above order without going over the 2 percent total.

Collecting Use Tax on Products Delivered from Inside Texas with One Place of Business

If a seller's only place of business is outside a local taxing jurisdiction, and he ships or delivers taxable items inside a taxing jurisdiction, the seller must collect local *use* taxes if he is engaged in business in the jurisdiction.

For example, assume a place of business is in Spring Branch and the seller is delivering its products to a customer in the City of Bulverde. The delivery of tangible personal property located within a local taxing jurisdiction causes the seller to be *engaged in business* in Bulverde. Therefore, the seller needs to collect a total of 8.25 percent sales and use tax on the transaction in this order: 6.25 percent state sales tax, plus 0.5 percent Comal County sales tax, plus 0.5 percent



Bulverde Library District sales tax, plus 1.0 percent Bulverde city use tax.

Please note that, in this example, if the seller makes a delivery into a county or special purpose district which imposes a *sales* tax, that county or special purpose district local use tax would not be due because a customer does not owe the same **type** of tax twice. Since Comal County and Bulverde Library District (SPD) sales taxes are due, the customer does not owe another county or special purpose district use tax based on the point of delivery.

Products Delivered from Inside Texas with More Than One Place of Business

When a seller has more than one place of business, the local taxes that are due are determined by the place of business from which the items are delivered. If goods or taxable services are delivered from a place of business outside a taxing jurisdiction to a location inside a taxing jurisdiction, collect use taxes for that jurisdiction if the seller is engaged in business in that jurisdiction.

For example, assume a seller has a place of business outside the city limits of Blanco in Blanco County and a place of business inside the City of Marble Falls. A customer places an order for furniture at the Marble Falls store that will be delivered to a location inside the city limits of Blanco. The seller delivers the furniture in its own vehicle from its place of business in Blanco County. Based on these facts, the seller must first collect all applicable local *sales* tax, which is 0.5 percent local tax for Blanco County. Since the 2 percent cap is not yet reached, the seller needs to determine whether any applicable *use* tax applies, starting with city use tax. Since the delivery is made into the City of Blanco, the 1.5 percent *use* tax for the City of Blanco is due, even though the order was taken at the Marble Falls location. The seller has now reached the 2 percent cap, so no additional local tax can be collected, even if applicable.

Collecting Use Tax for Drop Shipments

A seller engaged in business in Texas is responsible for collecting Texas state tax and any applicable local taxes that apply on all sales that are mailed, shipped or delivered to a customer in Texas, including orders that are drop shipped. A “drop shipment” is an order that is received by a seller at one location and shipped directly to the customer’s location either by the seller or an unrelated third-party supplier from another location.

Orders Placed at a Seller’s Place of Business in Texas; Products Delivered from a Seller’s Out-of-State Location

If a seller receives an order at a place of business in Texas and the taxable goods or services sold are delivered to Texas customers from the seller’s out-of-state location, and if the seller is engaged in business where the product is delivered, the seller should collect *use* tax for any city, county, special purpose district, and/or transit authority jurisdictions in effect where the product is delivered, if the seller is *engaged in business* in the jurisdiction.



**Orders Placed With a Seller Located Outside Texas;
Products Delivered From Within Texas**

If a seller receives an order at a place of business located outside of Texas, but delivery or shipment is made to a customer in Texas from a location within the state that is not a place of business (such as a warehouse or distribution center), the seller must collect *use* tax for any city, county, special purpose district, and/or transit authority jurisdictions in effect where the product is delivered, if the seller is *engaged in business* in the jurisdiction.

**Order Received by Salesperson Located Outside Texas;
Products Delivered From Within Texas**

If an order is received by a salesperson assigned to a place of business located outside Texas, and delivery or shipment is made from a location within Texas other than a place of business of the seller such as a warehouse or distribution center, the seller must collect *use* tax for the city, county, special purpose district, or transit authority jurisdictions in effect where the product is delivered if the seller is *engaged in business* in the jurisdiction.

**Internet Sales****Texas sellers**

Internet sellers are required to collect local tax in the same way as sales made by any other business. Texas sales and use tax applies to taxable items (tangible personal property and taxable services) on orders taken over the Internet when shipped or delivered to a purchaser in Texas. Local sales taxes are based on the seller's place of business, and use taxes are based on the point of delivery to the purchaser. As with sales made by traditional "brick and mortar" businesses, Texas taxes should not be collected on taxable items shipped or delivered by the seller to a location outside of Texas.

A seller's home is considered a place of business if the seller receives or processes three or more orders there during a calendar year. For example, a person living in Texas who sells three or more items through an Internet or online auction Web site has a place of business in Texas and has responsibility for collecting and reporting tax for the year in which those sales were made. The location of the server hosting the Web site is not a factor in determining what sales and use taxes should be collected.

Internet sellers are responsible for collecting Texas state and local taxes if the Internet seller is engaged in business within a jurisdiction.

For example, Internet sellers are considered to be engaged in business in a jurisdiction if there is a related or affiliated entity in the jurisdiction that will accept returns of merchandise sold by the Internet seller. The related or affiliated entity may be a separate division or branch of the same seller or a separate legal entity. More specifically, Company A is a traditional brick and mortar retailer with several locations in Texas. Company A forms a separate legal entity, Company B.com, to make sales over the Internet. Company B.com does not have a physical location in Texas; however, customers making purchases from Company B.com may return or exchange that merchandise at Company A's physical locations in



LOCAL SALES AND USE TAX BULLETIN

Guidelines for Collecting Local Sales and Use Tax

Texas. Based on these facts, Company A is acting as a representative for Company B.com, and Company B.com has sufficient contacts or “nexus” in any sales tax jurisdictions in effect at the Company A location.

Out-of-State Sellers

A seller that doesn’t operate a place of business in Texas, but who is otherwise engaged in business in this state, is required to collect state and local *use* taxes rather than sales taxes on all orders of taxable items delivered to customers in Texas.

Use tax rates are the same as sales tax rates. As previously stated, a warehouse is not considered a place of business for Texas sales and use tax purposes unless three or more orders are received at that location. If a seller receives an order at a place of business located outside of Texas, but delivery or shipment is made to a customer in Texas from a location within the state that is not a place of business (such as a warehouse or distribution center), the seller must collect *use* tax for the city, county, special purpose district or transit authority where the product is delivered if the seller is *engaged in business* in the jurisdiction.

Exceptions

If a person sells any of the following services, just follow the instructions below for that service. However, the 2 percent cap on collecting local taxes still applies to these services.

Amusement Services

Collect local taxes on amusement services based on where the performance or event occurs.

Cable TV

Collect local taxes on cable television services based on where the customer receives the service.

Exception: Since February 8, 1996, satellite service provided to residential and commercial properties,

commonly known as “direct-to-home” satellite service, is exempt from local taxation under the Federal Telecommunications Act of 1996.



Contractors with Separated Contracts for New Construction and for Residential Repair and Remodeling Projects

Contractors working under a *separated contract* make separate charges for materials and for labor. A contractor who has a separated contract for new residential construction, new commercial construction or for residential repair and remodeling must collect local taxes on the charge for materials based on the location of the job site.

Under a *lump sum contract* for residential repair and remodeling or new construction (residential or nonresidential), the contractor is considered the consumer of all materials and must pay tax to suppliers at the time of purchase; the contractor does not collect sales tax on the charge to the customer. If the supplier delivers goods to the job site, the supplier will collect sales tax from the contractor based on the location of the supplier’s place of business and may also collect local use taxes based on



the point of delivery. A lump sum contract is a contract in which the agreed contract price is one lump-sum amount and in which the charges for incorporated materials are not separately stated from charges for labor.



Florists

Collect local taxes, including transit taxes, based on the location of the place of business that takes the order, regardless of where the delivery is made.

Landline Telecommunications Services

Collect local taxes on landline telecommunications services sold on a call-by-call basis based on the location of the telephone or other device from which the call or

other transmission originates. If the seller cannot determine where the communication originates, collect local tax based on the address to which the service is billed.

Mobile Telecommunications Services

Collect local taxes on mobile telecommunications services (e.g., cell phones) based on the place of primary use. The place of primary use must be the customer's residential street address or the primary business street address within the service provider's licensed service area. If the person that contracts for the service with the service provider is not the end user, the end user's place of primary use determines which local taxes are due.

Natural Gas and Electricity

Collect local taxes based on where the customer receives the gas or electricity. Residential use of gas and electricity is exempt from county, special purpose district, and transit tax, and, in many cities, from city tax. A list of all cities that currently impose sales tax on the residential use of gas and electricity and those cities eligible to do so is available online at: www.window.state.tx.us/taxinfo/utility/reflist.html.

Nonresidential Real Property Repair and Remodeling

If a contractor provides repair, restoration or remodeling services on nonresidential improvements to realty, the entire charge, regardless of whether it is billed as a separated or lump sum charge, is subject to local tax. Collect local taxes for labor and materials based on the location of the job site.

Waste Collection Services

Collect local taxes based on where the waste is collected.

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