

Sales Tax

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Disclaimer: Please note that I am not an expert on sales tax issues, but the following help is available to you.

Texas State Comptroller's website: www.window.state.tx.us.taxinfo

Tax help email address: tax.help@cpa.state.tx.us

Tax help phone number: 1-800-252-5555

Purchases Made

Any purchases made in the name of the **school** district or group of the school district are exempt from sales tax. Exempt organizations are entitled to an exemption only on items purchased and used directly and exclusively in pursuit of the exempt purpose. For school districts, items purchased must relate to the educational process.

Purchases made by **individual** members or teachers/coaches of classes or teams have no exemptions even though they are connected with a school or a school organization. Examples are: cheerleaders purchasing their own uniforms, band members purchasing their own instrument, or science students purchasing a science board.

In order to be afforded the sales tax exemptions, various certificates should be presented:

Tax Exemption Certificates – The Texas Sales and Use Tax Exemption Certificate should be presented each time a purchase is made. It must state that the merchandise being purchased is for the organization's own use in providing education, is being made in the name of the organization, and that payment will be made from the organization's own funds.

Resale Certificates – A Texas Resale Certificate should be given to the vendor when merchandise is purchased by the school for resale (such as fundraisers).

Hotel Certificates – Educational organizations and their employees traveling on official business of the organization are exempt from the Texas state hotel tax: the organization and their employees must pay local tax. The Texas Hotel Occupancy Tax Exemption Certificate must be presented at the time of registration at the hotel. When traveling out of state, district employees or groups are not afforded any tax exemption on hotels. (When individuals request reimbursement for the Texas local or out of state hotel taxes paid out of state taxes, you should reimburse them the tax that they could not be exempt from.)

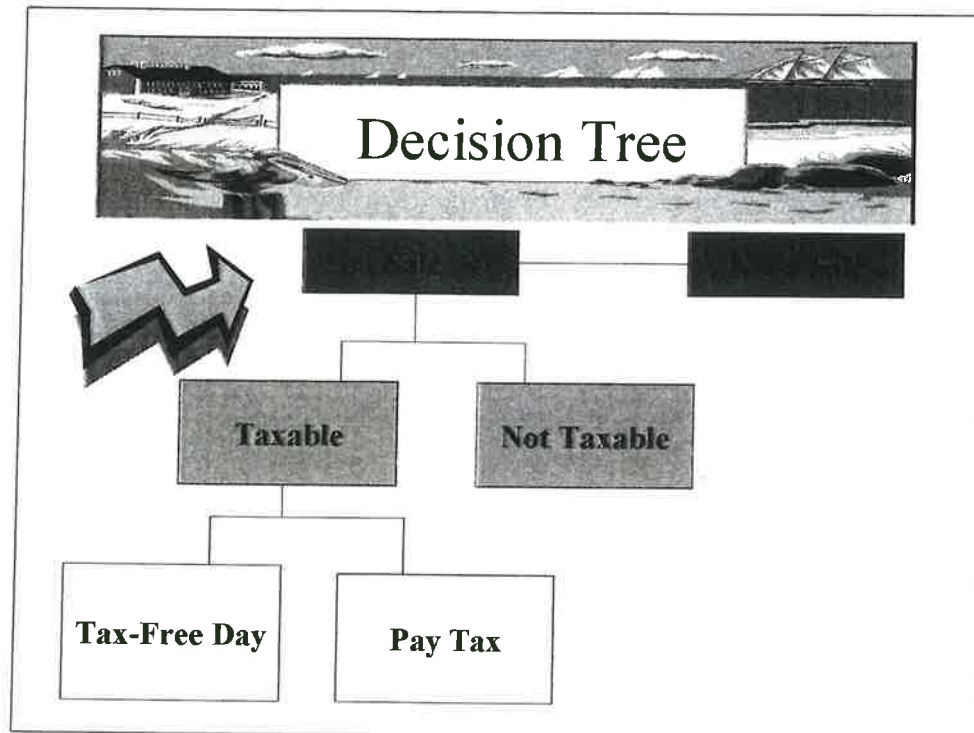
Note that meals purchased by the school for group student travel on authorized school trips are exempt from the sales tax only if the school contracts for meals. (This would also apply for banquets for school groups.) Generally, the meal must be paid for with a school check and the eating establishment must be provided with an exemption certificate. Individual members of the groups may not claim exemption from sales tax on meals they purchase while on a school or school district authorized trip. (When individuals request reimbursement for their individual meals, you should reimburse them the tax that they could not be exempt from.)



Revenue Received

Sale vs. Not a Sale

Often times, there is confusion as to whether something is a sale or not. For all revenue received, we must decide if it is a sale, or if it is not a sale.



A sale is the transfer of title or possession of tangible personal property for consideration (usually money). A sale also includes the performance of a taxable service for consideration. All sales (whether taxable or not) are to be reported on line 1 of the Texas Sales and Use Tax Return.

In some fund-raising activities, the school or school group is merely acting as a sales representative for a retailer, and tax must be collected. The tax would be remitted to the retailer, and the retailer would claim it as their sale and they would pay the tax to the Comptroller's office. The school would not report this type revenue as a sale. Examples are vending machine sales where the vendor services the machine, school pictures, and library book sales. Only when the school or school group purchases the merchandise and then resells these items to their customers is the school the seller. The school should provide a resale certificate to the retailer.



Sales Tax Issues

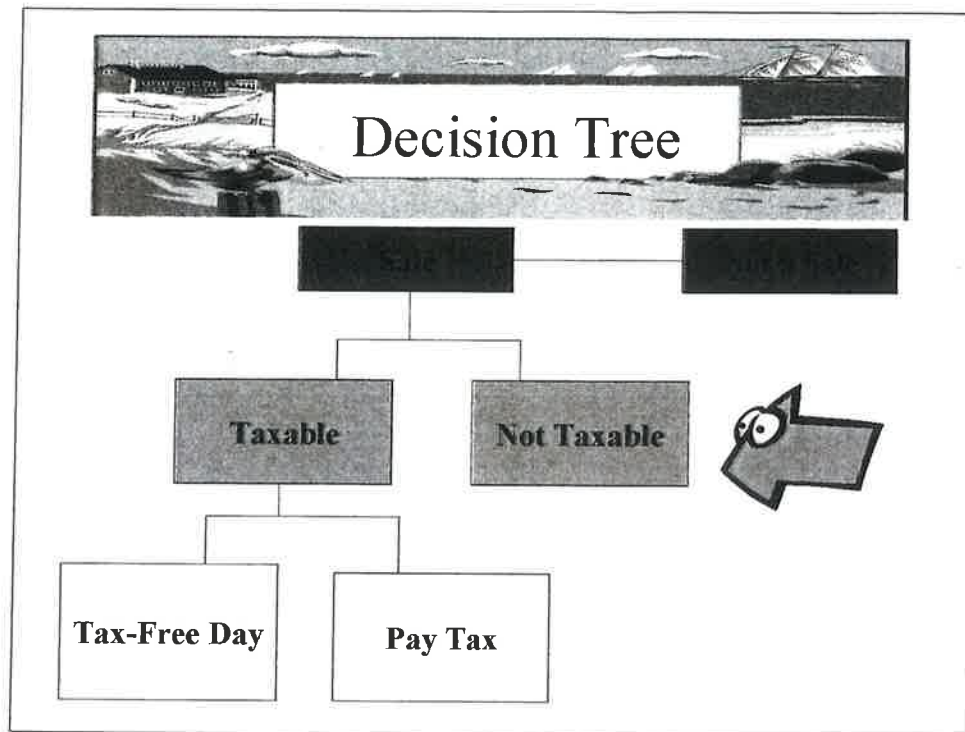
Sale	Not a Sale
Admission – athletic, dances, dance performances, drama performances	Collection of money from students to pay a company for admission or service (i.e., Magic Theatre, Sea World, PSAT test)
Admission – summer camps, clinics, workshops, project graduation	Commissions received, Deposits
Donated items that are sold	Donations of money to the school or school group or donations for a commemorative brick.
Fundraisers where we are the seller, not just the middle-people	Dues received for clubs
Parking Permits	Fees – musical instrument maintenance, lab, uniform cleaning, transcripts
Rentals of items	Fieldtrip collections
Rental of facilities	Fines received – textbooks, library books, parking, locker, uniforms, calculators, obligations
Sales of food	Fundraisers when the school group merely receives a commission (i.e., library book fairs, some author sales, recycling)
Sales of merchandise (to include items made by students)	Lost payments – books, handbooks, calculators, locks, ID cards
Sales of services	Marathon fundraisers – these are donations (i.e., lift-a-thon, jog-a-thon, jump rope for heart, basketball hoops)
School publication sales	NSF check redeposit
	Summer School, Saturday School, Community Education tuition and fees

Taxable Sales vs. Non-taxable Sales

Texas sales tax statutes impose tax on the sale, lease, or rental of tangible personal property and selected services. Tangible personal property includes personal property that can be seen, weighed, measured, felt, touched, or that is perceptible to the senses in any other manner. When an individual purchases a tangible item and it becomes the personal property of someone, it is taxable. It is irrelevant if the school logo is on the item or that the item will be utilized by a student in a school group for a school function.

School districts, schools, and school groups making sales of taxable items that do not have a specific exemption must collect and remit the tax. The items or activities on the following lists have been identified as being taxable or non-taxable by the Comptrollers' Office when sold or sponsored by a school, by an organization within a school, PTAs, Booster Clubs, and employee associations. Whether taxable or not, all sales are reportable as sales on line 1 of the Texas Sales and Use Tax Return. The lists are not all-inclusive but may help you make determinations on other similar sales.





NON-TAXABLE SALES

Ad sales - in yearbooks, athletic programs, newspapers, posters
Admission – athletic, dances, dance performances, drama and musical performances
Admission – summer camps, clinics, workshops, project graduation
Admission – banquet fees
Admission - bids, prom, homecoming
Admission - tournament fees, academic competition fees
Cosmetology services (Products sold to customers are taxable)
Discount/Entertainment cards and books
Facility rentals for school groups
Food items sold during fundraisers (including annual plants and seeds that produce food for human consumption)
Labor - automotive, upholstery classes (parts are taxable)
Magazine subscriptions greater than six months
Parking permits
Services - car wash, cleaning



TAXABLE SALES

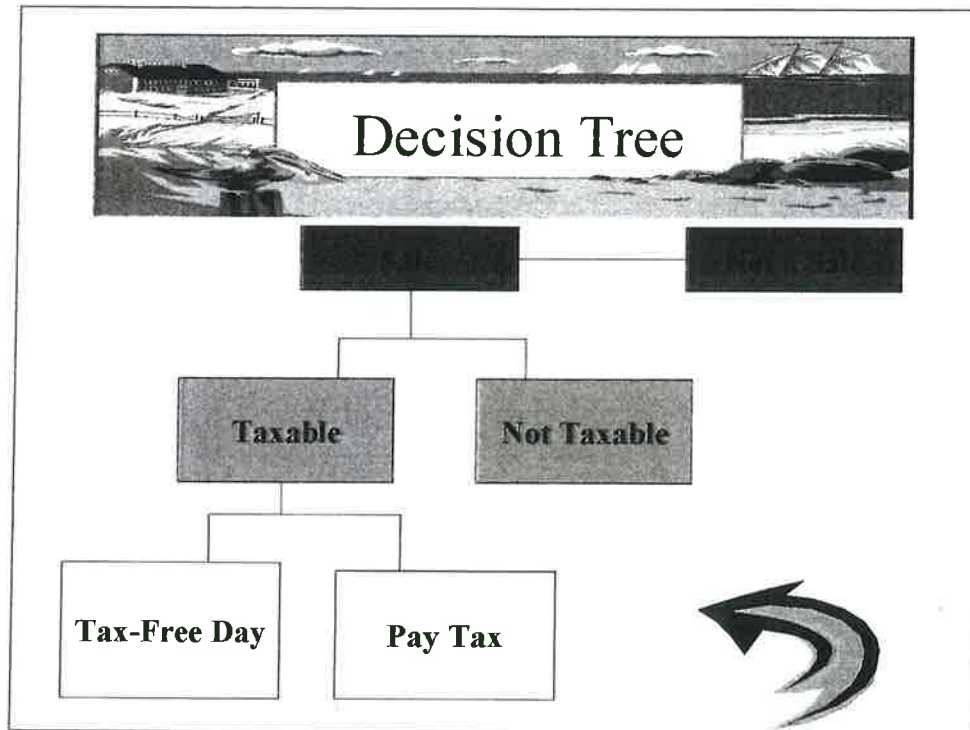
Agenda books		Magazines – subscriptions less than six months
Agricultural sales		Magazines - when sold individually
Art - supplies and works of art		Musical supplies - recorders, reeds
Artistic - CDs, tapes, videos		Parts - career & technology classes (not to include products used in cosmetology)
Athletic - equipment and uniforms		Parts - upholstery
Auction items sold		PE - uniforms, supplies
Automotive - parts and supplies		Pennants
Band - equipment, supplies, patches, badges, uniform sales or rentals		Pictures - school, group (if school is the seller)
Book covers		Plants - holiday greenery and poinsettias
Books - workbooks, vocabulary, library, author (when we are the seller)		Rentals - equipment of any kind
Brochure items		Rentals - uniforms of any kind, towels
Calculators		Repairs to tangible personal property (i.e., computer repair, house remodeling)
Calendars		Rings and other school jewelry
Candles		Rummage, yard, and garage sales
Car - painting, pin stripping		Safety supplies
Clothing - school, club, class, spirit		School publications - athletic programs, posters
Computer - supplies, mouse pads		School publications - brochures
Cosmetology products sold to customers		School publications - magazines (unless > six month subscription)
Cups - glass, plastic, paper		School publications - newsletters, newspapers (generally are not sold though)
Decals		School publications - reading books
Directories - student, faculty		School publications - sheet music, hymnals
Drafting – supplies		School publications - yearbooks
Family and Consumer Science - supplies and sewing kits		School store - all items (except food)
Fees - copies, printing, laminating		Science - science kits, boards, supplies
Flowers - roses, carnations, arrangements		Spirit items
Greeting Cards		Stadium seats
Handicrafts		Stationery
Horticulture items		Supplies – any sold to students
Hygiene supplies		Uniforms - any type to include PE, dance team, drill team, cheerleaders, athletic, club shirts
Identification cards – when they are sold to entire student body (not just the fine for a lost ID card)		Vending - pencils and other non-edible supplies when the school services the machine
Locks - sales and rentals		Woodworking crafts - entire sale to include parts and labor
Lumber		Yard signs
Merchandise, tangible personal property		

No



Tax-Free Days

Each school **district**, each **school**, and each **bona fide chapter of each school** is allowed to have two, one-day tax-free sales each calendar year. During these tax-free sales, the organization may sell any taxable item tax-free. The exemption does not apply to items sold for more than \$5,000, unless the item is manufactured by the organization, or the item is donated to the organization and is not sold to the donor. There is no limit on the number of bona fide groups at a school or school district.



A **bona fide chapter** is a group that must be organized for some business or activity other than instruction or a participatory group. Essentially, any student group that is recognized by the school and is organized by **electing officers** (not just participatory captains), **holding meetings**, and **conducting business** are bona fide chapters of the school and each group may have two, one-day, tax-free sales in a calendar year. Groups meeting for classroom instruction or team sports are not categorized as bona fide chapters and do not qualify for the tax-free day sales.

For example:

- ❖ The school district qualifies for a tax-free day.
- ❖ The school-wide fundraiser qualifies for a tax-free day.
- ❖ The Basketball Club qualifies, but the basketball team does not.
- ❖ The Cheerleader Club qualifies, but not the cheerleader team.
- ❖ The Debate Club qualifies, but debate teams and classes do not.
- ❖ The French Club qualifies, but the French classes do not.
- ❖ The Senior Class qualifies, but not one particular class that has seniors in it.



Sales Tax Issues

One-day means 24 consecutive hours; the delivery should be made on a single day. Generally title passes to the purchaser when the item is given to the purchaser. In the case of pre-ordered and pre-paid sales, title can transfer as soon as the seller (school) receives the order. Therefore, the date the items are delivered by the vendor to the seller is designated as the one-day for the purposes of the tax-free sales. However, persons buying from surplus stock on subsequent dates after the tax-free day owe tax on the items.

When the school or school group receives a commission, the tax-free day sale provisions cannot apply because the sale is the vendor's sale, not the school's sale. The school group would collect and remit tax to the vendor, and the vendor would report the sale and remit tax to the Comptroller's office.



Other Information

Food Sales

The sales tax statute exempts the sales of food, including meals, soft drinks, and candy, by a group associated with a public or private elementary or secondary school when the sales are part of a fund-raising drive sponsored by the organization, and all net proceeds from the sale go to the organization for its exclusive use. Student groups, PTAs and booster clubs are included in the provision. It does not matter if the sale is during the school day, the evening, or on a weekend; if it is a fund-raiser, it is not taxable.

However, tax-exempt sales of food by a **school district** (i.e., food service) are limited to the regular school day. Catered food sales by the district's food service are taxable unless sold to the school district. All athletic event concession sales are taxable unless the sales are part of a fund-raising event.

Schools must be mindful of the Texas Department of Agriculture School Nutrition Guidelines so that sales of food meet the requirements set forth. If the sales do not follow the guidelines, the school district may be liable to repay federal funds to the National School Lunch and Breakfast Program.

Sales and Use Tax Return

Reporting: After consideration of whether revenue is a sale or not, and whether it is taxable or not, you must complete your sales tax return. As noted earlier, total sales are included on line 1 of the Texas Sales and Use Tax Return. Total taxable sales would be reported on line 2 of the Texas Sales and Use Tax Return. Total taxable sales are calculated as total sales less non-taxable sales less tax-free day sales.

Be sure you take your ½% discount if you pay your tax timely by the 20th day of the month following the end of each reporting period.

Fines: According to the Texas Sales and Use Tax Return, fines can be imposed by the State Comptroller's office when sales tax reports are not submitted on a timely basis. According to the Texas Sales and Use Tax Return, the following penalties and interest can be imposed:

1 to 30 days late	Penalty of 5% of Net Tax Due
31 to 60 days late	Penalty of 10%
Over 60 days late	Penalty of 10% plus interest of 12% per annum.



Sales Tax Issues

An additional \$50 penalty may be assessed after more than two returns are received with a postmark later than the due date.

Though many of the schools may submit their information to the school district office timely, effectively they may not be considered timely because amounts that should have been reported as sales were not. We find this sometimes occurs when sales were non-taxable or tax-free days were utilized.

Booster Clubs, PTAs, and other associated groups

Occasionally we have found that these groups have used the school district's tax exemption certificate or the employer identification number. By law, these groups must obtain their tax exemption status and employer identification number independent of the school district.

These groups associated with the school district may qualify to obtain a federal 501 (c) (3) exemption under the federal Internal Revenue Service (IRS) code. These organizations must also apply to the Texas Comptroller's office to be recognized as exempt entities. They should complete an IRS Form SS-4 to obtain their own employer identification number (EIN).

Organizations may choose to file IRS Form 1023 for 501 (c) (3) tax-exempt status; however, they may be able to be recognized as an exempt organization without filing the form. An organization that is organized as a 501 (c) (3) that is not a private foundation, or has gross receipts in each taxable year of normally not more than \$5,000 can automatically obtain the 501 (c) (3) status. However, the organization can only obtain a determination letter from the IRS if they do complete the Form 1023 along with the other required documentation.

Once the organization obtains the exemption, it is allowed to have two one-day tax-free sales each calendar year. These groups must file their own Sales and Use Tax Return. These groups may hold raffles, but school districts and school district groups may not.

