

# Texas

## State Tax Update

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*Presented by:*

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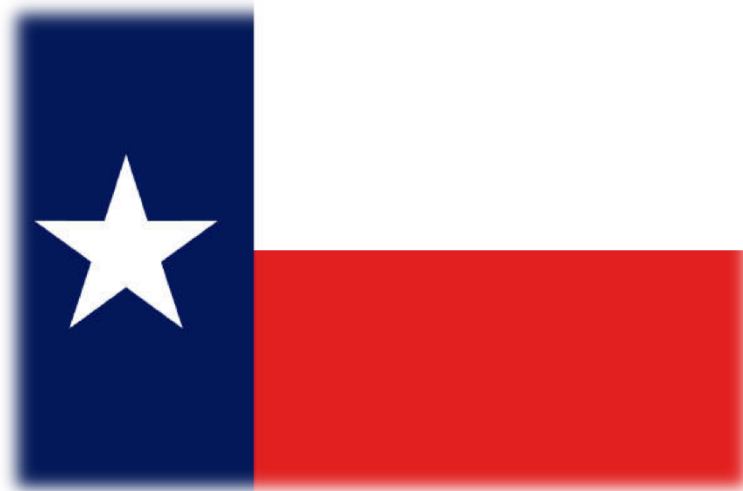
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# *Texas State Tax Update*



# Legislation Passed During The 84<sup>th</sup> Regular Session

## ■ **Senate Bill 1**

- State homestead exemption on school property taxes increased from \$15,000 to \$25,000.
- Average savings for homeowner is \$120 per year.

## ■ **House Bill 7**

- Repealed \$200 additional licensing fee imposed annually on 16 professions including CPAs, attorneys, and engineers.

# Legislation Passed During The 84<sup>th</sup> Regular Session

## ■ **House Bill 32**

- **Reduce** the rate of the franchise tax to **.75%** of taxable margin beginning with the 2016 report
  - 2013 - 1%
  - 2014 - .975%
  - 2015 - .95%
- **Reduce** the rate of the franchise tax for retail and wholesale entities to **.375%** of taxable margin
  - 2013 - .5%
  - 2014 - .4875%
  - 2015 - .475%

# Legislation Passed During The 84<sup>th</sup> Regular Session

- **House Bill 32**

- **E-Z computation** now available to taxable entities with no more than \$20 million in total revenue; up from \$10 million
- **Decrease** the tax rate under the E-Z computation from .575% to **.331%**

# Legislation Passed During The 83<sup>th</sup> Regular Session

- **House Bill 1133**
  - **Sales Tax Refund for Providers of :**
    - **Cable Television**
    - **Internet Access**
    - **Telecommunications Services**
  - **Effective September 1, 2013**
  - **Does not apply to local sales and use tax**

# Legislation Passed During The 83<sup>th</sup> Regular Session

- **House Bill 1133 (cont.)**
  - A **“qualifying purchase” is tangible personal property** :
    - Purchased, leased or rented by a provider or subsidiary on which Texas state sales tax was paid or accrued by the provider or the subsidiary,
    - **Directly used or consumed** in or during the provision, distribution, transmission, conveyance, routing, or reception of the service

# Legislation Passed During The 83<sup>th</sup> Regular Session

- **House Bill 1133 (cont.)**
  - **Examples of Qualifying Purchases:**
    - Circuit equipment
    - Batteries, power supply
    - Switching equipment
    - Software used in the provision of the service
    - Fiber, cable
    - Splice kits
    - Ethernet ONT
    - Cisco Router ASR
    - Transceiver



# Legislation Passed During The 83<sup>th</sup> Regular Session

- **House Bill 1133 (cont.)**

- Refund is limited to \$50 M per year
- A pro rata method will be used if qualifying claims exceed \$50 M
- Refund requests are due no later than April 30<sup>th</sup> each year

# Sales Tax on Telecommunications

- Sales Tax Rule 3.334 – Telecommunications Services
  - Telecommunications services billed call-by-call or per transmission are to be taxed based on the location where the call originates. If undeterminable, based on address billed.
  - Taxable Telecommunications
    - Basic local access
    - Enhanced services
    - Intrastate toll
    - Special access to end user
    - Interstate toll originating in Texas and billed to a Texas number
    - Interstate end user charges: SLC and ARC
    - Other separately stated federal, state and local taxes and fees imposed on LEC's (TUSF, FUSF)

# Sales Tax on Telecommunications

## ■ Taxable Telecommunications (cont.)

- Installation of telecommunications services, including service connection fees
- Lease, rental, sale, or other charges for telecommunications equipment if included on the same bill, receipt, or invoice as the sale of a telecommunications service (even if it is identified as a separate line item). This would include inside wire monthly maintenance contract on non-residential customers
- Prepaid wireless telecommunications services

## ■ TXUSF Considerations

- Assessment based on taxable intrastate telecommunications reported under Chapter 151 of the Texas Tax Code. (Lifeline service exception.)

# Sales Tax on Telecommunications

- Nontaxable Telecommunications

- Interstate toll not originating in Texas
- Interstate toll originating in Texas but not billed to a Texas number or address
- Telecommunications services purchased for resale or by exempt entity. (Obtain certificates in lieu of tax.)
- Charges for federal, state, or local taxes or fees that are imposed on the purchaser rather than on the seller of the telecommunications service

# Sales Tax on Telecommunications

- Mobile and Landline Telecommunications Services that are not sold on a call-by-call basis:
  - Service providers should collect local tax based on the customer's place of primary use.
  - If the customer's primary place of use is outside the state, no tax is due.
  - The primary use rule does not apply for mobile telecommunications if you are traveling in a foreign country, and the call both originates and terminates in the foreign country.

# Sales Tax on Telecommunications

- Prepaid Wireless Telecommunications

- Local tax is based on the business address of the seller when the sale occurs in Texas in person.
- If the sale occurs over the telephone or Internet, tax is due only if the purchaser's address is in Texas.

# Sales Tax on Telecommunications

- State and local sales tax is due on Texas intrastate calls, while only state sales tax is due on interstate calls.
- Not all local taxing jurisdictions impose sales tax on telecommunications services. For a list of jurisdictions that do impose the tax, see:
  - **Publication 96-339 – “Jurisdictions That Impose Local Sales Tax on Telecommunications Services”**
  - Located on the Comptroller’s website @ [http://www.window.state.tx.us/taxinfo/taxpubs/tx96\\_339.html](http://www.window.state.tx.us/taxinfo/taxpubs/tx96_339.html)

# Internet Services

- **Local Tax on Taxable Internet Services** (footnote p)
  - **One place of business** :- local tax based on the location of the seller's place of business
  - **More than one place of business**:
    - Order placed in person – local tax based on the seller's place of business from which the service is ordered
    - Order placed over the internet / phone – local tax based on the seller's place of business from which the service is provided
- \$25 monthly exemption per entity for internet access



# Cable and Satellite Television Services

- **Cable television and all services connected with the provision of the service are taxable**
  - Local tax - Based upon the point of delivery to the purchaser
  - Direct-to-home Satellite Television Exemption - Residential property is exempt from local sales and use tax under the federal telecommunications reform legislation of 1996

# Taxable Data Processing Services

- **Subject to 20% Exemption**
  - Customer Billing that includes recording and rating
  - Data Storage
  - Offsite backup of electronic files
  - Monthly website hosting fees
  - Website Creation and maintenance
  - Conversion of data
  - Network interface services

# Computer Software and Hardware

## ■ **Taxable Services**

- Software support or maintenance when provided by the vendor that sold the software
- Installing network wiring and cabling in the walls or roof of existing commercial client offices
- Computer assembly (including initial set up, connecting monitor, keyboard, and printer) if in connection with the sale of the hardware
- Repair, remodel, or maintenance of hardware

# Other Taxable Services (commercial property)

- **Cleaning Charges (Janitorial Services)**
- **Lawn Care Services & Landscaping**
- **Repair, remodel & maintenance of non-residential real property**
- **Repair, remodel & maintenance of tangible personal property**
- **Security services**
- **Information services**
- **Debt collection services**

# Miscellaneous Sales Tax Issues

- **Contract services for the repair or remodel of damaged cable are taxable**
- **Contract services for work on an existing tower are taxable**
- **Contract services for labor to install new cable or a new tower are not taxable**

# Miscellaneous Sales Tax Issues

- **Services integral to the performance of the taxable service being provided may be purchased tax free**
  - **Services included with the customer's phone, cable television or internet service such as:**
    - **Data storage, gps, news, music**
  - **ISP Providers can also purchase the following services tax free:**
    - **Telecommunications service**
    - **Broadband**

# Miscellaneous Sales Tax Issues

- **Products transferred to the customer as a part of the taxable service being provided may be purchased tax free if care, custody, and control is transferred to the customer.**
  - **Wireless phones**
  - **Modems**
  - **Set top boxes**
  - **Remote controls**
- **Clearview Cable Case:** Subscribers contractually bound to care for the equipment
  - **Antennas**
  - **Cables, wiring**
  - **Equipment located on the customer's premise (Rule 3.313)**

# Intercorporate Services

- **An exemption from tax is provided, for all affiliated entities who file consolidated federal income tax returns, on all intercorporate services with the exception of the following activities:**
  - **Telecommunication services**
  - **Cable television services**
  - **Repair or maintenance of tangible personal property**
  - **Rental of equipment**



# Telephone Cooperative Issues

- Exempt from Sales Tax – **No “purpose” test is required to be met.**
- Exempt from Hotel Occupancy Tax
- Exempt from Texas Motor Vehicle Tax
- Exempt from Gasoline and Diesel Fuels Tax

# Telephone Cooperative Issues

- Lump-sum contractors may not use telephone cooperative's exemption certificate to purchase materials they use in completing a contract for a cooperative.
- Lump-sum contractors are the consumers of all materials and must pay tax on them.
- Consider requesting separated contracts

# Transfer of Completed Work Order from Coop to Subsidiary

January 20, 2005

To: Sandra Hilliard, Auditor

From: Al Van Allen, Tax Policy

Subject: [REDACTED] Telephone Cooperative  
Sale of Fiber Optic Network to a For-profit Subsidiary

## Facts:

[REDACTED] Telephone Cooperative, a telephone cooperative formed under the Telephone Cooperative Act (Utilities Code, Chapter 162) is exempt from paying sales tax based on the language in Utilities Code Sec. 162.062.

[REDACTED] Telephone Cooperative created a wholly owned for-profit subsidiary, [REDACTED] Communications Ltd ([REDACTED]) that is not exempt from payment of sales tax. [REDACTED] Telephone Cooperative built a buried fiber optic network and sold a portion of the completed network to the for-profit subsidiary. The fiber network is an improvement to realty when completed.

You examined work orders provided by [REDACTED] Telephone Cooperative that show separate amounts for:

Material  
Supply Expense  
Total Material & Supply  
Labor  
Benefits  
Other Charges  
Total Labor & Other  
AFUDC  
Cumulative Total

# Transfer of Completed Work Order from Coop to Subsidiary

Based on internal calculation, the costs were allocated (by percentage) to [REDACTED] and Co-op; when the W/O was closed. You believe the Co-op is, in essence, acting like a general contractor presenting separated billings and ask if the Coop is responsible to collect sales tax on its itemized charges for materials.

Question: Is the Coop required to collect sales tax from [REDACTED] on any part of the charge for the fiber network?

Response: I understand that no contract or other agreement exists that shows that the Coop built the network under contract with [REDACTED]. The Coop sold a completed improvement to realty rather than tangible personal property and so is not required to collect tax on any part of the transaction. The Coop was within its statutory authority to buy the incorporated materials tax-free and so does not incur a sales or use tax liability on those purchases.

# Texas Sales and Use Tax Prepayment Report

- Prepayment discount - 1.25%
- Timely filing discount - .50%
- Total discount 1.75%
  
- Prepayment must be:
  - at least 90% of tax that will be due for the reporting period, or
  - 100% of the total tax due and paid in the same reporting period of the preceding year



# Texas Sales and Use Tax Prepayment Report

- Prepayment report due on the 15<sup>th</sup> of each month
- Prepayment report and payment for July sales due July 15<sup>th</sup>
- Regular sales tax report for July sales still due August 20<sup>th</sup>

# Thank You!



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