

# Guidelines to Texas Tax Exemptions (96-1045)

September 2007

Various types of organizations may be exempt from sales tax on purchases necessary to the organization's exempt function, or from hotel occupancy tax or franchise tax. The exemptions vary by tax, depending upon the type of organization. Organizations must apply for exemption using the appropriate application:

- **Charitable** - AP-205
- **Homeowners** - AP-206
- **Educational** - AP-207
- **Religious** - AP-209
- **Federal and all others** - form AP-204

While sales tax exemptions apply to purchases necessary to the organization's exempt function, exempt organizations must collect tax on most of their sales.

More information on the different categories of state exemptions is listed below. **All applications are available online.**

Exempt organizations must collect tax on most of their sales. See our publication 96-122, "Exempt Organizations, Sales and Purchases," for more information.

## Federal Exemption under Internal Revenue Code (IRC) Section 501(c)

(Tax Code Secs. 151.310 and 171.063)

The Texas Tax Code provides an exemption from franchise tax and sales tax to:

- Nonprofit organizations with an exemption from Internal Revenue Service (IRS) under IRC Section 501(c) (3), (4), (8), (10) or (19);

And from franchise tax only to

- Nonprofit corporations with an exemption from IRS under IRC Section 501(c)(5), (6) or (7);
- Corporations (profit and nonprofit) with an exemption from IRS under IRC Section 501(c)(2), (16) or (25).

Organizations that are exempt from sales or franchise tax because of their federal exempt status with IRS (under one of the IRC 501(c) sections listed above) are not exempt from hotel occupancy tax.

To apply for exemption based on the federal exempt status, complete AP-204. Include a copy of the exemption determination letter issued by the IRS, including any addenda. The organization name on the IRS letter must match the organization's legal name as listed in the Articles of Incorporation, Certificate of Formation or governing document. If the IRS letter was issued more than four years ago, you will need to obtain a current verification letter. Send us a copy along with a copy of the original determination letter that granted the exempt status.

Organizations applying for exemption based on their status as a 501(c) (2) or (25) organization must also provide a statement showing the organization for which the corporation holds title to property. The corporation must also show that the organization for which it holds title for property is either exempt from, or not subject to, the Texas franchise tax. This can be done by including with the application a copy of the formation or governing document and a list of all the activities of the organization it holds title for.

A federal tax exemption under the IRC only applies to the specific organization to which it is granted. An organization that changes its structure creates, in effect, a new organization and must reapply for both federal and state tax exemption. For example, assume that the Acme Foundation, an unincorporated organization, is granted a federal tax exemption. The foundation then incorporates in the name of Acme Foundation Inc. The federal exemption granted to Acme Foundation, the unincorporated entity, does not extend to the new corporate entity Acme Foundation Inc.

To apply for federal exemption or to obtain a current verification letter, contact the IRS at (877) 829-5500. The IRS Web site is <http://www.irs.gov>.

## **Additional Exemption Categories And Requirements**

### **Cemetery Corporations**

**(Tax Code Sec. 171.059)**

To apply for federal tax exemption or to obtain a letter verifying federal tax exemption, contact the Internal Revenue Service at (877) 829-5500.

A nonprofit corporation organized to provide places of burial is exempt from the franchise tax.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. If the documents do not clearly state the corporation is providing burial sites, a signed statement to that effect should be included. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

### **Certain Insurance Corporations Subject to the Insurance Code**

**(Tax Code Sec. 171.052)**

An insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in Texas now required to pay an annual tax under Chapter 4 or 9, Insurance Code, measured by its gross premium receipts, is exempt from franchise tax. In addition, a non-admitted insurance organization that pays premium receipts tax during a tax year is exempted from the franchise tax for that same tax year. To apply for exemption, complete AP-204. Include copies of any previous and current licenses issued by the Texas Department of Insurance. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

### **Certain Insurance Corporations for Farm Mutuals, Local Mutual Aid Associations and Burial Associations**

### **(Tax Code Sec 171.0525)**

A corporation that is a farm mutual insurance company, local mutual aid association or burial association is exempt from franchise tax. To apply for exemption, complete AP-204. Include any additional documentation to show the corporation meets the requirements. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Chamber of Commerce Organizations**

### **(Tax Code Secs. 151.310 and 171.057)**

A nonprofit chamber of commerce is exempt from sales and franchise taxes if it represents at least one Texas city, county or geographic area and promotes the general economic interest of all commercial enterprises in the area it represents. The exemption does not include organizations such as trade associations or business leagues that serve a single line or closely related lines of business within a single industry.

To apply for exemption, complete AP-204 and include any written material that describes the chamber's activities, or a Web site that provides this information. If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. If the organization is incorporated, we will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Charitable Organizations**

### **(Tax Code Secs. 151.310, 156.102 and 171.062)**

A nonprofit charitable organization is exempt from sales, franchise, and the state portion of hotel occupancy taxes if the organization devotes all or substantially all of its activities to the alleviation of poverty, disease, pain and suffering by providing food, drugs, medical treatment, shelter, clothing, or psychological counseling directly to indigent or similarly deserving individuals for little or no fee. The organization's funds must be derived primarily from sources other than fees or charges for its services. Organizations with a broader range of activities will not qualify for exemption in this category.

To apply for exemption, complete AP-205 and provide all required documentation as listed in the application. If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. If the organization is incorporated, we will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Convention and Tourist Promotional Agencies**

### **(Tax Code Secs. 151.310 and 171.057)**

A nonprofit convention and tourist promotional agency organized or sponsored by at least one Texas city or county is exempt from sales and franchise taxes.

To apply for exemption, complete AP-204 and include documentation from the city or county that they organized or sponsored the agency and a description of all the organization's activities. If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. If the agency is incorporated, we will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Cooperative Associations**

### **(Tax Code Sec. 171.075)**

A cooperative association incorporated under Subchapter B, Chapter 301, Health and Safety Code, or under the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes or Title 6, Chapter 251, Business Organizations Code) is exempt from franchise tax. To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Code or Act. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Cooperative Credit Associations**

### **(Tax Code Sec. 171.076)**

A cooperative credit association incorporated under Chapter 55, Agriculture Code; an organization organized under 12 U.S.C. Section 2071; or an agricultural credit association regulated by the Farm Credit Administration is exempt from franchise tax.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Codes. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Corporations Exempt by Another Law**

### **(Tax Code Sec. 171.081)**

A corporation can be exempted from franchise tax by statutes other than the Tax Code. Exemptions may be established under other chapters of Texas law, such as an exemption created and supported by language in the Texas Local Government Code, Texas Transportation Code, etc.

Many organizations are exempt from federal income tax as 501(c)(3) organizations. These organizations can qualify for exemption from Texas sales and franchise taxes.

To apply for exemption, complete AP-204 and reference the statutory citation that establishes the exemption. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Corporations Involved with City Natural Gas Facility**

### **(Tax Code Sec. 171.066)**

A nonprofit corporation organized to construct, acquire, own, lease or operate a natural gas facility in behalf and for the benefit of a city or its residents is exempt from franchise tax.

To apply for exemption, complete AP-204 and include a detailed description of all the activities of the corporation to show the corporation is constructing, acquiring, leasing, operating, or owning a natural gas facility. The description should also show in behalf of or for the benefit of the residents of which city the activities are being conducted. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Corporations Organized for Agricultural Purposes**

### **(Tax Code Sec. 171.060)**

A nonprofit corporation organized to hold agricultural fairs and encourage agricultural pursuits is exempt from franchise tax.

To apply for exemption, complete AP-204 and include a detailed description of all the corporation's activities, including a description of the fairs the corporation has conducted and how the fairs encouraged agricultural pursuits. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Corporations Organized for Conservation Purposes**

### **(Tax Code Sec. 171.064)**

A nonprofit corporation organized solely to educate the public about the protection and conservation of fish, game, other wildlife, grasslands or forests is exempt from franchise tax. To apply for exemption, complete AP-204 and include a detailed description of all the activities of the corporation; written materials or a Web site that describe the activities of the corporation; and a statement explaining how the corporation's activities educate the public about the protection and conservation of fish, game, other wildlife, grasslands or forests. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the protection and conservation of fish, game, other wildlife, grasslands or forests is the corporation's sole purpose. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Corporations Organized for Student Loan Funds or Scholarships**

### **(Tax Code Sec. 171.087)**

A nonprofit corporation organized solely to provide student loan funds or scholarships is exempt from franchise tax.

To apply for exemption, complete AP-204 and include a detailed description of all the corporation's activities. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that providing student loan funds or scholarships is the corporation's sole purpose. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

### **Corporations Organized to Provide Convalescent Homes for Elderly**

#### **(Tax Code Sec. 171.067)**

A nonprofit corporation organized to provide convalescent housing for persons who are at least 62 years old or who are handicapped or disabled is exempt from franchise tax.

To apply for exemption, complete AP-204 and include documentation showing that all persons residing in the convalescent home or housing are handicapped or disabled, or that they are at least 62 years old. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

### **Corporations Organized to Provide Cooperative Housing**

#### **(Tax Code Sec. 171.068)**

A nonprofit corporation engaged solely in the business of owning residential property for the purpose of providing cooperative housing for persons is exempt from franchise tax.

To apply for exemption, complete AP-204 and include a description of all the corporation's activities. Also include documentation showing that a cooperative exists for the property and that the cooperative is owned by and benefits the residents that are living on the property. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

### **Corporations with Business Interest in Solar Energy Devices**

#### **(Tax Code Sec. 171.056 and 171.107)**

A corporation is exempt from franchise tax if engaged solely in the business of manufacturing, selling or installing solar energy devices. A solar energy device is defined as "a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power."

To apply for exemption, complete AP-204 and include a description of all the corporation's activities; a description of the solar energy devices that are being manufactured, sold or installed; and any other documentation that supports the claim for exemption. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent

with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Credit Unions-Federal**

### **(Tax Code Sec. 151.309)**

A federal credit union organized under 12 United States Code, Sec. 1768 is exempt from sales tax and both the state and local portions of hotel occupancy taxes.

To apply for exemption, complete AP-204 and include documentation that shows the credit union is federally chartered.

## **Credit Unions-State**

### **(Tax Code Sec. 171.077)**

A state-chartered credit union incorporated under Subtitle D, Title 3, Finance Code, is exempt from franchise tax.

Visit us online for more information about exempt organizations, including an online search.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Code. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Development Corporations**

### **(Tax Code Secs. 171.074 and 151.341)**

A nonprofit corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is exempt from franchise and sales taxes. The sales tax exemption does not apply to the purchase of an item that is a project or part of a project that the corporation leases, sells or lends.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Educational Organizations**

### **(Tax Code Secs. 151.310, 156.102 and 171.061)**

A nonprofit educational organization is exempt from sales, franchise and the state portion of hotel occupancy taxes if the organization is devoted solely to systematic instruction (particularly in the commonly accepted arts, sciences and vocations) with a regularly scheduled curriculum, faculty and enrolled student body or students in attendance at a place where the educational activities regularly occur. An organization with activities consisting solely of public discussion groups, forums, panels,

lectures or other similar programs will also qualify if the presentations provide instruction in the commonly accepted arts, sciences and vocations.

To apply for exemption, complete AP-207 and provide all required documentation as listed in the application. If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. If the organization is incorporated, we will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Electric Cooperatives**

### **(Tax Code Sec. 171.079 and Utilities Code, Chapter 161)**

A nonprofit electric cooperative is exempt from sales, franchise and both state and local portions of hotel occupancy taxes if it is incorporated under the Electric Cooperative Act (Utilities Code, Chapter 161) and is not a participant in a joint powers agency. A nonprofit electric cooperative located outside Texas may qualify under this provision if it meets the criteria under the Electric Cooperative Act.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. A cooperative located outside Texas must provide a copy of the formation documents and a current Certificate of Existence issued by its state of incorporation, and any other documentation that shows how it meets the requirements under the Electric Cooperative Act. Unincorporated entities must provide copies of their governing documents, such as the constitution or bylaws.

## **Emergency Medical Service Corporations**

### **(Tax Code Sec. 171.083)**

A nonprofit corporation organized solely for providing emergency medical services, including rescue and ambulance services, is exempt from franchise tax.

To apply for exemption, complete AP-204 and include a detailed description of all the activities of the corporation. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that providing emergency medical services is the corporation's sole purpose. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Farmers Cooperative Societies**

### **(Tax Code Sec. 171.071)**

A farmers' cooperative society incorporated under Chapter 51, Agriculture Code, is exempt from franchise tax.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Code. Non-Texas corporations must also include a copy of the corporation's formation documents and a



current Certificate of Existence issued by their state of incorporation.

## **Health Facilities Development Corporations**

**(Tax Code Sec. 171.081 and Health & Safety Code, Sec. 221.033)**

A nonprofit corporation formed under the Health Facilities Development Act of 1981 is exempt from sales, franchise and both the state and local portions of hotel occupancy taxes.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Homeowners ' Associations**

**(Tax Code Sec. 171.082)**

A homeowners ' association that is a nonprofit corporation organized and operated primarily to obtain, manage, construct and maintain the property in or of a residential condominium or residential real estate development that is legally restricted for use as residences (the property cannot be used for any commercial activity) is exempt from franchise tax if the individual owners of the lots, residences or residential units have at least 51 percent voting control of the association. A homeowners ' association will not qualify for this exemption if voting control is held by a single individual, family or by one or more developers, declarants, banks, investors or similar parties.

To apply for exemption, complete AP-206. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Hospital Laundry Cooperative Associations**

**(Tax Code Sec. 171.073 and Health & Safety Code, Section 301.013)**

A hospital laundry cooperative association incorporated under Subchapter A, Chapter 301, Health and Safety Code, is exempt from franchise and sales taxes.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Code. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Housing Finance Corporations**

**(Tax Code Sec. 171.072 and Local Government Code, Chapter 394)**

A housing finance corporation incorporated under the Texas

Until tax exemption has been granted, corporations must keep their franchise tax account current in order to be

Housing Finance Corporations Act (Chapter 394, Local Government Code) is exempt from sales, franchise and both the state and local portions of hotel occupancy taxes.

in good standing.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Local Organizing Committees**

**(Vernon's Texas Civil Statutes, Title 83 Labor, Chapter 10, Art. 5190.14, Sec. 9)**

A local organizing committee, as defined in Article 5190.14, Vernon's Texas Civil Statutes, is exempt from sales, franchise and the state portion of hotel occupancy taxes if it is exempt from federal income tax under IRC Section 501(c) and authorized by one or more endorsing municipalities or counties to pursue an application and submit a bid on the municipality's or county's behalf to be selected as the host site of one or more games, as defined in Article 5190.14, Vernon's Texas Civil Statutes.

To apply for exemption, complete AP-204 and include written authorization from the endorsing municipality or county. If the committee is incorporated, we will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. If the committee is unincorporated, include a copy of the governing document such as the bylaws or constitution. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Lodges**

**(Tax Code Sec. 171.070)**

A lodge incorporated under Article 1399 et seq., Revised Civil Statutes of Texas, 1925, is exempt from franchise tax.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Marketing Associations**

**(Tax Code Sec. 171.069)**

A marketing association incorporated under Chapter 52, Agriculture Code, is exempt from franchise tax.

To apply for exemption, complete AP-204. Include a copy of the file-stamped articles of incorporation that states the corporation is incorporated under Chapter 52, Agriculture Code; or include a copy of the corporation's Certificate of Incorporation (from the Texas Secretary of State) or the Certificate of Authority (from the Texas Department of Agriculture) that states the corporation is a cooperative marketing association. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Non-Profit Water Supply Corporations**

### **(Tax Code Sec. 171.065)**

A nonprofit water supply or sewer service corporation organized in behalf of a city or town under Chapter 67, Water Code, is exempt from franchise tax. To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Code. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Open-End Investment Companies**

### **(Tax Code Sec. 171.055)**

An open-end investment company, as defined by the Investment Company Act of 1940 (Section 80a-1 et seq., 15 U.S.C.) that is subject to that Act and is registered under the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), is exempt from franchise tax.

To apply for exemption, complete AP-204. Include documentation from the State Securities Board showing the corporation is licensed as an open-end investment company, and include copies of previous licenses the corporation has been issued. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Corporations Organized to Promote County, City or Another Area (Public Interest Organizations)**

### **(Tax Code Sec. 171.057)**

A nonprofit corporation organized solely to promote the public interest of a city, county, town or other area within Texas is exempt from franchise tax. The corporation must show that promotion of the public interest is its exclusive purpose and not merely an incidental result.

To apply for exemption, complete AP-204 and include a detailed description of all the corporation's activities and a statement explaining how those activities promote the public interest of the city, county, town or other area within Texas. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that promoting the public interest of a city, county, town or other area within Texas is the corporation's sole purpose. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Railway Terminal Corporations**

### **(Tax Code Sec. 171.053)**

A railway terminal corporation that has no annual net income from its business is exempt from franchise tax.

To apply for exemption, complete AP-204. Include a detailed description of all the activities of the corporation and documentation showing no annual net income. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Recycling Operations**

**(Tax Code Sec. 171.085)**

A corporation engaged solely in the business of recycling sludge as defined by Section 361.003, Solid Waste Disposal Act (Chapter 361, Health and Safety Code) is exempt from franchise tax.

To apply for exemption, complete AP-204. Include documentation showing that recycling of sludge is the sole activity of the corporation and a detailed statement explaining how the recycled material qualifies under Section 361.003, Solid Waste Disposal Act. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Religious Organizations**

**(Tax Code Secs. 151.310, 156.102, and 171.058)**

A nonprofit religious organization is exempt from franchise, sales and the state portion of hotel occupancy taxes if it is an organized group of people regularly meeting at a particular location with an established congregation for the primary purpose of holding, conducting and sponsoring religious worship services according to the rites of their sect.

Information about forming a nonprofit corporation and required filings with the Secretary of State can be found online.

Organizations that simply support and encourage religion as an incidental part of their overall purpose, or that further religious work or teach their membership religious understanding, will not qualify for exempt status under this category.

To apply for exemption, complete AP-209 and provide all required documentation as listed in the application. If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## **Telephone Cooperatives**

**(Tax Code Sec. 171.080 and Utilities Code, Chapter 162)**

A nonprofit telephone cooperative is exempt from sales, franchise and both the state and local portions of hotel occupancy tax if it is incorporated under the Telephone Cooperative Act (Utilities Code,

Chapter 162). A nonprofit telephone cooperative located outside Texas may qualify under this provision if it meets the criteria under the Telephone Cooperative Act.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Act. A cooperative located outside Texas must include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation, as well as documentation that shows how it meets the requirements under the Telephone Cooperative Act.

### **Texas National Research Laboratory Commission\***

**(Tax Code Secs. 151.349 and 171.086 and Government Code, Sec. 465)**

A nonprofit corporation formed by the Texas National Research Laboratory Commission under Government Code, Section. 465.008(g) is exempt from franchise and sales taxes. Taxable items purchased or leased from these corporations are exempt from sales tax if the items are used for an eligible undertaking as defined by the Government Code, Section 465.021.

To apply for exemption, complete AP-204. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation was created under the qualifying Code. Include documentation that the corporation was formed by the Texas National Research Laboratory Commission under Government Code, Section 465.008(g).

**\*Note: Repealed in 80th Regular Session, HB387.**

### **Volunteer Fire Departments**

**(Tax Code Secs. 151.310 and 171.057)**

Nonprofit volunteer fire departments are exempt from sales and franchise taxes. A qualifying organization must be a company, department or association organized to answer fire alarms and extinguish fires and, optionally, provide emergency medical services, whose members receive nominal or no compensation for their services.

To apply for exemption, complete AP-204 and include a detailed description of the organization's activities and confirm that the organization's members receive nominal or no compensation for their services.

If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. If the governing/formation documents do not clearly state that the purpose of the corporation is to answer fire alarms and extinguish fires, provide a written statement that confirms this is the purpose of the corporation. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

### **Youth Athletic Organizations**

**(Tax Code Secs. 151.310 and 171.057)**

A youth athletic organization is exempt from sales and franchise taxes. Qualifying organizations must be engaged exclusively in providing athletic competition among persons under 19 years of age.

To apply for exemption, complete AP-204 and include:

- a copy of the rules and regulations of the competition. If a description of the coaches' responsibilities is not included, provide a statement with that information;
- a statement confirming that no person 19 years of age or older will be allowed to participate in the competition at any time; a description of the type of athletic competition provided by the organization, the date the organization began registering athletes for competition, and the date of the organization's first athletic competition.

If the organization is unincorporated, include a copy of the organization's governing document, such as the bylaws or constitution. The document must show that the organization is nonprofit. We will review the corporation's formation documents on file with the Texas Secretary of State to verify that the corporation's purpose is consistent with the requirements of this section. Non-Texas corporations must also include a copy of the corporation's formation documents and a current Certificate of Existence issued by their state of incorporation.

## Franchise Tax Responsibilities

Every profit and nonprofit corporation in Texas must file all franchise tax reports and public information reports with appropriate payment until the Comptroller's office has granted tax exemption. Failure to do so will cause the loss of corporate privileges as well as the forfeiture of charter by the Texas Secretary of State.

We cannot grant an exemption to a corporation whose charter is forfeited. A corporation whose charter has been forfeited may file an application for exemption with us instead of filing the past due franchise tax reports and paying the tax.

If we determine the corporation is eligible for exemption, we will issue a letter to the corporation stating that franchise tax responsibilities have been met. The corporation should include this letter when filing for reinstatement with the Secretary of State.

We cannot actually grant the exemption until the charter is reinstated. Once the Secretary of State has approved the reinstatement, call us at (800) 531-5441 and ask for the Exempt Organization section. We will then be able to proceed with the exemption process.

An exempt organization must immediately notify the Comptroller in writing if there is a change in its purpose or activities that causes the organization to no longer qualify for the exempt status. If an organization is exempt from sales or franchise tax based on a federal exemption and the federal exemption is revoked, the organization must immediately provide a copy of the IRS documentation to the Comptroller.

If the Comptroller revokes an exemption, the organization is subject to that tax effective the date of the revocation.

Effective with reports due on or after January 1, 2008, the franchise tax applies to many non-corporate entities. These entities can qualify for a franchise tax exemption in the same manner and under the same conditions as a corporation.

# **Revised Franchise Tax Effective for Franchise Tax Reports Due On or After January 1, 2008**

Changes made to the franchise tax law extend the tax to non-corporate entities such as limited partnerships, limited liability partnerships and general partnerships if one or more partners is not an individual person, business trusts, professional associations, business associations, joint ventures and other legal entities with statutory liability protection. The law provides that a non-corporate entity could also qualify for a franchise tax exemption in the same manner and under the same conditions as a corporation.

**If you have questions or need information on applying for an exemption from the Texas franchise tax, sales tax or hotel occupancy tax, please call our toll-free number.**

**(800) 252-5555**

**For questions about property taxes and  
ad valorem taxes, call our Property Tax Division at**

**(800) 252-9121**

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(09/2007)