

[Páginas en español](#) | [Contact Us](#)
Site Search

 [Skip to content](#)



Texas Tuition Promise Fund enrollment ends Feb. 28!

Quick Start for:

- [Citizens](#)
- [Business](#)
- [Government](#)

- [HOME](#)
- [ABOUT US](#)
- [TEXAS TAXES](#)
- [FINANCES & ECONOMY](#)
- [STATE PURCHASING](#)
- [FORMS](#)
- [e-SERVICES](#)

[Sales Tax Update Index](#)

Sales Tax Update

June 2008

TABLE OF CONTENTS

- [August Three-Day Sales Tax Holiday on Clothing, Footwear and Backpacks](#)
- [Fuel Surcharges](#)
- [Sports League Entry Fees](#)
- [Camps for Children](#)
- [Dive Right In: Swimming Pool Cleaning and Repairs](#)
- [Landscaping and Lawn Care Services](#)
- [Timber Exemption Lumberjack and Original Producers](#)

August Three-Day Sales Tax Holiday on Clothing, Footwear and Backpacks

Texans get a break from state and local sales taxes on purchases of most clothing and footwear this August. Due to changes in the Tax Code made in HB 3319, 80th Legislature, Texas' eighth annual three-day sales tax holiday begins at 12:01 a.m., Friday, August 15, 2008, and ends at midnight on Sunday, August 17, 2008. During the tax holiday, retailers cannot collect sales taxes on most clothes and shoes (including boots) that sell for less than \$100. The legislature has also added backpacks sold for less than \$100 for use by elementary and secondary students to the list of items eligible for the holiday.

Every city and local taxing jurisdiction in the state will participate in the holiday, so the tax break applies to both state and local sales taxes.

Texas tax law limits the exemption. Tax is still due on sales of athletic and protective clothing and footwear not normally worn except during the athletic activity or as protection. For example, since basketball shoes are worn for many activities other than basketball, they can be sold tax free during the tax holiday. On the other hand, spiked golf shoes are rarely worn except when playing golf and, thus, are not exempt from tax.

Additionally, tax is still due on sales of accessories, jewelry, handbags, luggage, umbrellas, wallets, watches and similar items.

The tax holiday does not extend to clothing and shoe rentals, which continue to be subject to state and local sales or use tax.

For more information about taxable and non-taxable items, see our publication, Clothing Sales Tax Holiday, 98-490.

Fuel Surcharges

The rising cost of fuel has prompted many companies to add a "fuel surcharge" to their invoices in relation to the sale of their goods and services. This fuel surcharge is not a state or federal tax or fee. It should not be stated or implied by invoice or any other means that this charge is imposed by the State of Texas.

A fuel surcharge may be subject to Texas sales and use tax. Fuel surcharges are taxed or exempted in the same manner as charges for transportation or delivery. That is, if the surcharge is related to the sale of taxable tangible personal property such as a piece of furniture, or to the performance of a taxable service such as landscaping, the charge is subject to tax, even if separately stated. Authority for this is Tax Code Section 151.007(a)(3)&(4) which states:

(a) "...sales price...means the total amount for which a taxable item is sold...without a deduction for the cost of:

(3) the transportation ... of tangible personal property; or

(4) transportation incident to the performance of a taxable service."

This portion of the statute is reflected in Comptroller Rule 3.303(a) which states:

(a)"...The sales tax applies to all transportation or delivery charges to a customer when a taxable item is sold..., and delivery charges are billed by the seller...to the purchaser. The charges for transportation or delivery, both before and after the sale are taxable even if stated separately from the sales price of a taxable item. These charges are considered to be services or expenses connected to the sale."

Sports League Entry Fees

Warm weather is here, and athletes' minds turn to sports league competitions. This leads to questions about the sports league entry fee. Is it taxable or not?

A sports league entry fee is defined as a fee paid by each team or athlete participating in season-long league competition. In return for the fee, league management provides such items as a facility or location for games, field lighting, officials, balls and other equipment. The league management may also provide training, scorekeeping, statistics and league standings. At the end of the competition, participants may receive trophies, certificates or other prizes furnished by the league management at no additional charge to the recipients.

Under Comptroller Rule 3.298(c)(1) relating to amusement services, a sports league entry fee is not taxable as an amusement service if:

- the fee substantially exceeds what would normally be paid for the use of the facility;
- the participant is paying to compete in a contest; and
- part of the fee offsets the cost of conducting the contest and for prizes.

For additional information about the taxability of these types of fees, see STAR # 9107L1121A01.

Camps for Children

Camps for children, including day camps and boarding camps, are not amusement services. The same is true of instruction for any sport or musical discipline. Therefore, charges for children's camps or for instructional classes in sports or music are not taxable. See STAR # 8709L0838G06.

Dive Right In: Swimming Pool Cleaning and Repairs

An in-ground pool or spa permanently attached to real property is considered an improvement to real property. Therefore, in-ground swimming pool and spa cleaning services are taxable real property services under Texas Tax Code Section 151.0101 and

Comptroller Rule 3.356(a)(7). Sales tax is due on the total charge for in-ground pool and spa cleaning services, including charges for labor and supplies. The service provider may issue a resale certificate to a supplier to purchase tax free the chemicals that will be left in a customer's pool, but should pay tax on items like chemical testing kits, pool vacuums, screens and brushes that are used to perform the service.

Charges for repairs to in-ground pools and spas are taxed differently from cleaning services. For residential in-ground pools or spas, no sales tax is due on labor to repair a pool liner, pump, filter or heating system. Under a separated contract, which has materials billed separately from labor, the repairperson is considered the retailer of all materials physically incorporated into the pool or spa. The repairperson is reselling those materials and must collect sales tax from the customer on any incorporated parts and materials. The repairperson may purchase these items tax free by providing suppliers a properly completed resale certificate in lieu of paying the tax. If the repairperson paid tax on purchases of incorporated materials (instead of purchasing them tax-free), the repairperson would still be required to collect tax from the customer on the materials, but would be allowed a credit on the sales tax return for taxes paid on those materials.

Under a lump-sum contract or, the labor and materials are billed as a single charge. The repairperson may not charge sales tax to the customer for residential pool or spa repair. However, the lump-sum charge may be set to cover all the costs the repairperson incurs, including the tax paid on the incorporated materials. The repairperson owes tax on all the incorporated materials when purchased from suppliers, unless the repairperson also maintains a tax-free inventory of the items for sale.

See Comptroller Rule 3.291 for information about the repair or remodeling of residential real property by contractors.

For nonresidential or commercial in-ground pools or spas, such as those found at hotels or health clubs, the total charge (including labor and parts) to repair the pool is taxable. See Rule 3.357 for more information regarding repair, remodeling and restoration of nonresidential real property.

Above-ground pools and spas without a permanent attachment to realty (such as decking or in-ground plumbing to fill and drain the pool or spa) are considered tangible personal property. The total charge (including labor and materials) to install or repair such an above-ground pool or spa is taxable on both residential and nonresidential property. See Rule 3.292 for more information about the repair, remodeling, maintenance and restoration of tangible personal property.

The Texas Resale Certificate, Form 01-339 (Front), is required to properly document items purchased for resale.

Landscaping and Lawn Care Services

If you sell landscaping or lawn services, you may have an obligation to collect and remit sales and use taxes. Landscaping and lawn services include any work done to maintain or improve lawns, yards and ornamental plants and trees.

Collecting Tax on Landscaping and Lawn Services

If tax is due, you should collect state tax, plus any local tax (city, county, special purpose district or transit) on the total charge for these services. Sales tax should be collected according to the location of your place of business. Please be aware that, effective September 1, 2007, transit tax is collected under the same guidelines as city, county, or special purpose district tax. That means the transit tax based on the location of your place of business is not eliminated if a taxable landscaping service is delivered from a seller's place of business inside a transit authority to a customer's location outside the transit authority. See Comptroller Publication 94-105, "Guidelines for Collecting Local Sales and Use Tax" for more information.

Collecting Tax on Construction Activities

Landscaping and lawn services do not include the construction or repair of decks, retaining walls, fences or pools, or the installation of underground sprinkler systems. These activities are considered either new construction or repair or remodeling of real property. If a single job consists of both construction and landscaping activities, be sure to separate landscaping charges from charges for new construction or for repair or remodeling because different taxability rules apply.

Nonresidential real property repair or remodeling is a taxable service. The service provider must collect sales tax on the total charge to the customer for materials, labor and other expenses. The service provider may issue a resale certificate to the supplier when purchasing materials transferred to the customer. Refer to Rule 3.357 regarding Real Property Repair, Remodeling, and Restoration; Real Property Maintenance. Please be aware that, effective September 1, 2007, sales tax for nonresidential repair or remodeling is based on the location of the jobsite, not the service provider's place of business. See Tax Code § 323.203(m).

No tax is due on labor to repair or remodel residential real property or to build new improvements to realty (residential or nonresidential). The type of contract determines how tax is paid on the materials incorporated into the realty. If the construction contract is lump sum (one charge, including labor and materials), the contractor pays tax when purchasing the materials and does not collect tax from the customer. If the contract is separated (separate charges for labor and materials), the contractor collects sales tax from the customer on the charges for materials but not for labor. Sales tax due on the charges for materials under a separated contract is calculated based on the location of the jobsite. A separated contractor may purchase the building materials tax-free by issuing a resale certificate to suppliers in lieu of tax. Refer to Rule 3.291 on Contractors for more information.

A person who performs both landscaping and construction activities in the same job must separately state the charges and collect tax according to the charges on the invoice. In the examples below, the tax rate for the service provider's place of business is 7.25%. The tax rate for the jobsite is 8.25%.

EXAMPLE A: Invoice for a job which includes an \$800 charge for new deck construction under a lump sum contract, and a \$500 charge for landscaping service.

Landscaping service	\$500.00
Tax (7.25%)	36.25
New deck construction (Lump Sum Contract)	800.00
Total	<u>\$1336.25</u>

EXAMPLE B: Invoice for a job which includes a charge for new deck construction under a separated contract (\$200 for materials, \$600 for labor) and a \$500 charge for landscaping service

Landscaping service	\$500.00
Tax (7.25%)	36.25
Materials for new deck construction (Separated Contract)	200.00
Tax (8.25%)	16.50
Labor for new deck construction (Separated Contract)	600.00
Total	<u>\$1352.75</u>

EXAMPLE C: Invoice for a job which includes an \$800 charge for *nonresidential deck repair* (taxable service) and a \$500 charge for landscaping service

Landscaping service	\$500.00
Tax (7.25%)	36.25
Nonresidential deck repair	\$800.00
Tax (8.25%)	66.00
Total	<u>\$1402.25</u>

Landscaping by the Self-Employed

Lawn care and landscaping are nontaxable when done by a self-employed individual who:

- does the actual lawn care or landscaping services;
- has no employees, partners or other persons providing the services; and
- has gross receipts from lawn care or landscaping services of less than \$5,000 during the most recent four calendar quarters.

If your income from landscaping and lawn care exceeds \$5,000 during the most recent four calendar quarters, you must begin collecting tax on these services on the first day of the quarter after the threshold is exceeded. When your gross income from these services falls below \$5,000 for the most recent four calendar quarters, the exemption resumes on the first day of the next quarter.

Timber Exemption Lumberjack and Original Producers

The phased-in refund and credit provisions passed by the Legislature in 1999 for certain timber items under Tax Code §151.3162(b) expired on December 31, 2007. As a result, purchasers can now buy qualifying items tax-free by providing a properly completed exemption certificate to the seller.

We have received some inquiries from sellers of such things as chain saws asking if they can accept an exemption certificate from the purchaser under the timber exemptions provided by the above statute and Rule 3.367 if the purchaser is not an original producer. In response, we have added [#200804080L](#) on STAR which discusses the history and scope of the exemption.

96-237
(06/2008)

- [Texas Online](#)
- [Statewide Search from the Texas State Library](#)
- [State Link Policy](#)
- [Texas Homeland Security](#)

Susan Combs, Texas Comptroller • [Window on State Government](#) • [Contact Us](#)

- [Privacy and Security Policy](#)
- [Accessibility Policy](#)
- [Link Policy](#)
- [Public Information Act](#)
- [Compact with Texans](#)