

The Comptroller of Public Accounts proposes amendments to §3.72, concerning trailers, farm machines, and timber machines. The amendments implement Senate Bill 2076, 85th Legislature, 2017, which amended the definition of "travel trailer" in Transportation Code, Chapter 501 (Certificate of Title Act). This legislation is effective September 1, 2017.

Subsection (a)(15), defining the term "travel trailer," is amended to be consistent with changes made in the Transportation Code, §501.002(30). Senate Bill 2076 increased the maximum dimensions of travel trailers, from less than 8 feet wide to less than 8 feet, six inches wide, and from less than 40 feet in length to less than 45 feet in length. No further amendments are made to this subsection to match the Transportation Code's definition of the term "travel trailer."

Public Benefit/Cost; Fiscal Implications for state or local government, small businesses, and individuals.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §152.001 (Definitions).

§3.72. Trailers, Farm Machines, and Timber Machines.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bunkhouse--A house trailer designed to be used as sleeping accommodations for multiple persons, such as a work crew, but not as a single-family residence.

(2) Farm or ranch--One or more tracts of land used, either wholly or in part, in the production of crops, livestock, and/or other agricultural products held for sale in the regular course of business. The term includes feed lots, dairy farms, poultry farms, commercial orchards, commercial nurseries, and similar commercial agricultural operations that are original producers of agricultural products. The term does not include, among other operations, home gardens, wildlife management, and timber operations.

(3) Farm machine--A self-propelled motor vehicle specially adapted for, and whose primary use is in, the production of crops or rearing of livestock, including poultry or use in feedlots. The term includes a self-propelled motor vehicle specially adapted for distributing and applying plant-food materials, agricultural chemicals, or feed for livestock. The term does not include pickup trucks or any self-propelled motor vehicle specifically designed, or specially adapted, to transport property other than the property being applied or for the sole purpose of transporting or setting in place agricultural products, plant-food materials, agricultural chemicals, or feed for livestock. Examples of farm machines include, but are not limited to, a truck cab chassis with a tank and equipment designed to apply liquid fertilizer, a truck cab chassis with a hopper and auger designed to distribute feed in a feedlot, and a truck modified with a flat bed, feed distributor, and hay bale roll-out distribution device. A flat bed truck modified solely with a hay spear/spike, hay bale roll-out distribution device, or cube feeder of a size allowing the truck bed to be used for general purposes is an example of a vehicle that does not qualify as a farm machine.

(4) Farm trailer--A trailer or semitrailer designed and whose primary use is as a farm or ranch vehicle. The term does not include a motor vehicle designed for human habitation, including, but not limited to, any vehicle designed for sleeping, dressing, lounging, restroom use, or meal preparation, even though the vehicle may also be used to transport livestock or agricultural products.

(5) House trailer--This term has the meaning given in §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax) referring to Subchapter T of this chapter (relating to Manufactured Housing Sales and Use Tax).

(6) Installation or set-up--Activities associated with the sale of a trailer, as defined in this section, including, but not limited to, spotting the trailer; preparing the foundation; placing, leveling, blocking, and anchoring the trailer; connecting sewer, water, electricity, and other utilities; and installing under skirting, awnings, and steps.

(7) Mobile office--This term has the meaning given in §3.306 of this title (relating to Sales of Mobile Offices, Oilfield Portable Units, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes).

(8) Oilfield portable unit--This term has the meaning given in §3.306 of this title.

(9) Park model--This term has the meaning given in §3.481 of this title.

(10) Primary use--Use of at least 80% of a motor vehicle's operating time.

(11) Timber machine--A self-propelled motor vehicle specially adapted to perform a specialized function for use primarily in timber operations, such as land preparation, planting, maintenance,

and harvesting of trees. The term does not include any self-propelled motor vehicle specifically designed or adapted for the primary use of transporting timber or timber products, including a self-propelled motor vehicle designed to transport cargo and adapted with a cargo-loading device. The term also does not include field service vehicles, such as those used to fuel or maintain other vehicles or crew vehicles.

(12) Timber operations--The production of timber, meaning the activities to prepare the production site or to plant, cultivate, or harvest commercial timber that will be sold in the regular course of business.

(13) Timber trailer--A trailer designed for and used primarily in a timber operation.

(14) Trailer--A vehicle without automotive power that is designed for human habitation or for carrying property upon a permanent chassis with wheels, axles, and a towing device, and that is designed to be drawn by a self-propelled motor vehicle. The term includes, but is not limited to, semitrailers, vans, flatbeds, tanks, dumpsters, trailers sold unassembled in a kit, dollies, jeeps, stingers, auxiliary axles, converter gears, bunkhouses, travel trailers, park models, and house trailers. The term does not include a unit designed to be towed by a self-propelled vehicle that meets the definition of moveable specialized equipment in §3.88 of this title (relating to Moveable Specialized Equipment and Off-Road Vehicles); mobile offices, as defined in this section; manufactured homes, as defined by Tax Code, §158.002; oilfield portable units, as defined in this section; or portable buildings, prefabricated buildings, and ready-built homes, as defined in §3.306 of this title.

(15) Travel trailer or recreational trailer--A trailer designed for human habitation as temporary living quarters in connection with recreational, camping, travel, or seasonal use that:

(A) is not designed to be used as a permanent dwelling;

(B) is less than eight feet six inches in [body ]width and 45[40 body] feet in length in the traveling mode and contains plumbing, heating, and electrical systems that may be operated without connection to outside utilities; and

(C) is not a utility trailer, enclosed trailer, or other trailer that is not designed for human habitation as its primary function.

(b) Loss of identity as a motor vehicle.

(1) A trailer is presumed to be permanently affixed to realty and therefore an improvement to real property that loses its identity as a motor vehicle, if:

(A) it is attached so that it cannot be reasonably reconstructed and made operational for highway use; or

(B) it is attached or installed in a manner that meets all governmental standards (if any) for the installation, including zoning regulations, building codes, federal regulations, and other requirements applicable to the land on which it is located; and it is either:

(i) installed on land owned by the purchaser, if the purchaser intends to incorporate the trailer as a permanent fixture to the land; or

(ii) installed on land leased to the purchaser, if the lease contract provides that improvements to the land become the property of the lessor.

(2) A trailer is presumed to be temporarily affixed to the real property, and remains a motor vehicle, if:

(A) the owner of the trailer only has permission to use the land but no contractual right to do so; or

(B) the owner of the trailer has a contractual right to use the land and also has the right to remove the trailer at any time or upon the termination of the contract.

(c) Application of motor vehicle sales and gross rental receipts tax.

(1) A retail sale of a trailer is a taxable sale of a motor vehicle. Motor vehicle sales or use tax is due on the total sales price including charges for all accessories attached at the time of sale and for transportation prior to the sale. The rental of a trailer is also a taxable transaction. Gross rental receipts tax is due on the gross receipts charged on the rental of a motor vehicle, including a trailer. Charges for transportation after the sale (transportation from the place of sale to the delivery or set-up site) and charges for installation or set-up after the sale are not subject to tax.

(2) A retail sale, use, or rental of a farm machine or a farm trailer is not subject to the motor vehicle sales and use tax or gross rental receipts tax if the primary use of the machine or trailer is for an exempt purpose. For the purposes of this subsection, use for an exempt purpose means use on a farm or ranch in the production of food for human consumption, grass, feed for any form of animal life or other livestock, or agricultural products to be sold in the regular course of business. The use of a farm machine or farm trailer to transport persons or property to or from competitions, shows, or rodeos, or for any other similar use, is not use for an exempt purpose.

(3) Farm trailers are also exempt from motor vehicle sales and use tax and gross rental receipts tax if the primary use of the trailer is by the original producers in processing, packing, or marketing their own livestock or agricultural products. Use in processing, packing, or marketing agricultural products by an agricultural cooperative or gin is not exempt, unless the cooperative or gin can prove the cooperative or gin itself is the original producer of all agricultural products being processed, packed, or marketed, and that those functions are performed at a location operated by the cooperative or gin.

(4) A retail sale, use, or rental of a timber machine or a timber trailer is not subject to motor vehicle sales and use tax or gross rental receipts tax if the primary use of the timber machine or timber trailer is in timber operations.

(5) A retail sale, use, or rental of an oilfield portable unit, as defined in this section, is not subject to motor vehicle sales and use tax or gross rental receipts tax. An oilfield portable unit that would otherwise be subject to motor vehicle sales and use tax, such as a trailer, becomes a taxable motor vehicle any time the unit ceases to be used exclusively as an oilfield portable unit. The tax is the obligation of the owner of the oilfield portable unit based on the owner's current book value of the unit multiplied by the current tax rate cited in Tax Code, §152.021(b). The tax should be remitted directly to the comptroller using Form 14-112, Texas Motor Vehicle Sales/Use Tax Payment. Tax due on diverted units that are held for motor vehicle rental should be submitted on Form 14-117, Texas Motor Vehicle Rental Tax Return. For more information regarding the taxation of oilfield portable units, refer to §3.306 of this title.

(d) Claiming exemption.

(1) Farmers, ranchers, agricultural producers, and timber operators must register with the comptroller and obtain a Texas Agriculture and Timber Exemption Registration Number. This

registration number must be stated on the exemption certificate described in this subsection and on the Application for Texas Certificate of Title/Tax Statement (Form 130-U) filed with the County Tax Assessor-Collector at the time of titling and/or registration. In addition, a person claiming the exemption for a farm or timber machine has the burden to show, at the time the vehicle is titled and/or registered, that the vehicle has been properly adapted or modified to qualify for the exemption.

(2) All persons engaged in the business of selling or renting agricultural and timber items that are exempt from the motor vehicle sales and use tax or gross rental receipts tax as described in this section must obtain from all purchasers:

(A) A completed Texas Motor Vehicle Tax Exemption Certificate for Agricultural/Timber (Form 14-319) or a completed Motor Vehicle Rental Exemption Certificate (Form 14-305 Back) for qualifying motor vehicle rentals;

(B) a copy of the Ag/Timber Registration Number Confirmation letter issued by the comptroller (Form 01-926); or

(C) a blanket exemption certificate or the Ag/Timber Registration Number Confirmation letter (Form 01-926) covering all motor vehicle purchases or rentals, provided that the motor vehicles being sold or rented are only of a type or quantity that would not generally be used except on a farm or ranch or in timber operations. When a person sells or rents both taxable motor vehicles and motor vehicles that may qualify for exemption under this section, the seller may either obtain an exemption certificate for each motor vehicle that qualifies for exemption or obtain a blanket certificate at the time the purchaser makes an initial exempt purchase or rental and keep that certificate on file. When subsequent exempt purchases or rentals are made, the invoice must be stamped with the words "exempt agricultural purposes," and the purchaser must sign the invoice.



(3) All persons engaged in the business of selling, renting, or leasing agricultural and timber items must retain a copy of the documents described in paragraph (2) of this subsection at their principal place of business for at least four years from the date of the transaction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

LITA GONZALEZ  
General Counsel  
Comptroller of Public Accounts  
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