

Texas Register Preamble

The Comptroller of Public Accounts proposes an amendment to §3.297, concerning carriers. The section is proposed to be retitled as, "Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles." All provisions in this section related to aircraft are moved to new §3.280 of this title (relating to Aircraft).

New subsection (a) is added to define key terms used throughout this section. Terms that are defined in other subsections of the rule are relocated to new subsection (a) to make the section easier to read and for consistency with other sections of this title. Subsequent subsections are relettered accordingly.

Paragraphs (1) and (2) define terms related to vessels. Paragraph (1) defines the term "Chapter 160 boat." This definition is adapted from the definition of the term "taxable boat" in §3.741 of this title (relating to Imposition and Collection of Tax). This definition also states that, for purposes of this section, the length of a vessel is measured from the tip of the bow in a straight line to the stern. This measurement is based upon Tax Code, Chapter 160 (Taxes on Sales of Boats and Boat Motors), which defines the term "boat" by reference to Parks and Wildlife Code, §31.003(1) (Definitions), as revised by House Bill 1106, 83rd Legislature, 2013. Paragraph (2) defines the term "commercial vessel" as a vessel that displaces eight or more tons of fresh water and is used exclusively and directly in a commercial or business enterprise. This definition is based on the language in Tax Code, §151.329 (Certain Ships and Ship Equipment) and §151.0101(a)(5)(B) ("Taxable Services"), current §3.292(a)(1) of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property), and STAR Accession No. 200206205L (June 24, 2002).

Paragraph (3) defines the term "common carrier." The definition in paragraph (3) is derived from Comptroller's Decision Nos. 8,984 (1983) and 35,637 (2001).

Paragraph (4) defines the term "licensed and certificated common carrier," which appears in Tax Code, §151.330(i) (Interstate Shipments, Common Carriers, and Services Across State Lines), but is not defined therein. The substance of this definition is relocated from current subsection (a)(1), which defined licensed and certificated carrier. The definition is amended to clarify that certificates of inspection or safety are not the appropriate documents for authorizing a person to operate as a common carrier because these documents relate to the carrier device itself rather than a person's right to operate a carrier business.

Paragraph (5) defines the term "locomotive," which appears in Tax Code, §151.331 (Rolling Stock; Train Fuel and Supplies), but is not defined therein, as self-propelled railroad equipment consisting of one or more units powered by steam, electricity, or diesel electric designed to operate on stationary steel rails or electromagnetic guideways. The definition is derived, in part, from definitions in 49 Code of Federal Regulations §218.5 and §229.5.

Paragraph (6) defines the term "marine cargo container." The substance of this definition is relocated from current subsection (b)(2)(A).

Paragraph (7) defines the term "motor vehicle." The substance of this definition is based, in part, on the definition of the term in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

Paragraph (8) defines the phrase "operating exclusively in foreign or interstate coastal commerce," which appears in Tax Code, §151.329, but is not defined therein. This definition is relocated from current subsection (b)(3)(A). Minor revisions are made to make the definition easier to read.

Paragraph (9), defining the term "railroad," is based on the definition in 49 Code of Federal Regulations §229.5, and §220.5, and Comptroller's Decision Nos. 39,781 and 41,577 (2004). The term includes narrow gauge shortline railroads, such as tourist, historical, or amusement park railroads, pursuant to Comptroller's Decision No. 36,869 (2000) and STAR Accession Nos. 7012L0782G14 (December 23, 1970) and 9003L0996A01 (March 30, 1990). The term is further defined to include private industrial railroads operated on steel rails connected directly to traditional railroads, but not private industrial railroads inside an installation not connected directly to traditional railroads, pursuant to Comptroller's Decision Nos. 39,781 and 41,577.

Paragraph (10) defines the term "rolling stock," which appears in Tax Code, §151.331, but is not defined therein. The term is defined, in part, as railroad equipment mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways. This portion of the definition is derived from Comptroller's Decision No. 36,869 (2000) and 49 Code of Federal Regulations §215.5. "Rolling stock" is further defined to include self-propelled specialized roadway maintenance equipment and trackmobile rail car movers pursuant to Comptroller's Decision No. 21,658 (1988) and STAR Accession No. 9208L1190C01 (August 31, 1992). However, "rolling stock" excludes equipment mounted on steel rails that is used for intra-plant transportation that is not part of or connected to a railroad. Examples include cranes operated on steel rails or

tracks used to load or unload ships. *See Reynolds Metals Co. v. Combs*, 2009 Tex. App. LEXIS 2466 (Tex. App.-- Austin 2009, pet. denied).

Paragraph (11) defines the term "train" as one or more locomotives coupled to one or more units of rolling stock operated by a railroad. This definition is based on 49 Code of Federal Regulations §220.5.

Paragraph (12) defines the term "vessel." This definition is adapted from Parks and Wildlife Code, §31.003(2), Comptroller's Decision Nos. 8,864 & 9034 (1980), and STAR Accession Nos. 7708T0083C10 (August 8, 1977) and 8906L0943C10 (June 7, 1989).

Relettered subsection (b), which is currently subsection (a), is amended to delete paragraph (1). The definition of a licensed and certificated carrier provided in this paragraph is relocated to new subsection (a). Subsequent paragraphs are renumbered accordingly. In addition, subsequent paragraphs are revised to replace the phrase "this state" with "Texas," and to replace the phrase "taxable items" with "tangible personal property," where appropriate. Renumbered paragraph (1) is amended to state that use tax is not due on "the storage or use of" repair or replacement parts. Tax Code, §151.101 (Use Tax Imposed) does not impose use tax on taxable items themselves, but rather imposes a tax on the storage or use in Texas of taxable items purchased outside of the state. Renumbered paragraph (2) is amended to replace the term "licensed and certificated carrier devices" with an explanation of the term derived from Comptroller's Decision No. 35,424 (2000). Current paragraph (5), concerning divergent use, is deleted. The information contained in this paragraph is moved to relettered subsection (d).

Relettered subsection (c), which is currently subsection (b), addresses the sale and repair of commercial vessels and their component parts. New paragraph (1) is added to explain that boat and boat motor sales or use tax is due on the sale or use of a Chapter 160 boat. Subsequent paragraphs are renumbered accordingly. Renumbered paragraph (2) is amended to add a subheading and to use the defined terms "commercial vessel" and "Chapter 160 boat." Information currently contained in paragraph (2), regarding the taxability of labor to repair vessels, is relocated to new paragraph (4).

Renumbered paragraph (3), addressing component parts, is revised to use the defined term "marine cargo container." This paragraph is also revised to memorialize prior comptroller guidance. *See* STAR Accession Nos. 9107T1125E10 (July 19, 1991) (identifying what constitutes the attachment of a component part to a commercial vessel), 8706L0819B10 (June 19, 1987) (identifying navigation equipment as a

component part), 9210L1197D11 (October 2, 1992) (listing long-line fishing gear, rigging equipment, turnbuckle, shackle, thimble, eye swivel, etc., as component parts), 201001518L (January 6, 2010) (including permanent coatings such as paint or varnish as a component part), and 8403T0557C14 (March 22, 1984) (stating that items required by federal or state law are component parts).

New paragraph (4) is added to address the taxability of labor and materials used to repair, remodel, restore, renovate, convert, or maintain a commercial vessel. This paragraph contains information previously provided in paragraph (2). Additional language is added from Comptroller's Decision No. 12,354 (1982) (providing that equipment used to repair commercial vessels is subject to tax). Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (5), which is currently paragraph (3), is revised to use the defined term "operating exclusively in foreign or interstate coastal commerce" and for readability.

Current subsections (c) and (d), which address aircraft, are deleted. The information contained in these subsections is relocated to new §3.280 of this title. Subsequent subsections are relettered accordingly.

Relettered subsection (d) which is currently subsection (e), is revised to more clearly address divergent use of property purchased tax free. Much of the information contained in this subsection is derived from subsection (a)(5) of the existing section.

Relettered subsection (e), which is currently subsection (f), contains specific rules of taxation relating to locomotives, rolling stock, and railroad tracks. The subsection's heading is amended by adding the terms "locomotives" and "trains" for consistency with the language in the body of the subsection. Paragraph (2) is amended to state, "Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items required by federal or state regulation." The phrase "if required by federal or state regulation" is deleted to more closely follow the language of Tax Code, §151.331. The paragraph is further amended to identify specific examples of supplies essential to the operations of locomotives and trains and to memorialize prior comptroller guidance. See Comptroller's Decision No. 33,003 (2000) (concerning federally-required telecommunication and signaling devices or equipment), and STAR Accession Nos. 9202L1155C02 (February 4, 1992) (listing rails, ballast, cross ties, plates, spikes, bridges, and trestles as examples of essential supplies) and 200002042L (February 11, 2000) (including roadbed moisture barriers as essential supplies). Paragraph (2) also gives examples of certain supplies that are not exempt, such as materials used to

construct, repair, remodel, or maintain depots, loading facilities, and storage facilities pursuant to STAR Accession No. 9205L1169E01 (May 7, 1992).

Paragraph (3) is added to explain the exemption from sales or use tax on the sale of labor and incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. This paragraph is based, in part, on language from Tax Code, §151.331 and §151.3111 (Services on Certain Exempted Personal Property) and STAR Accession No. 9003L0996A01 (March 30, 1990). Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (4), currently paragraph (3), is amended to add a cross-reference to §3.295 of this title (relating to Natural Gas and Electricity).

Paragraph (5) is added to address the taxability of labor and incorporated materials used in both the new construction and the repair of railroad tracks and roadbeds pursuant to Comptroller's Decision No. 34,595 (1998) and STAR Accession Nos. 9112L1142C11 (December 11, 1991) and 9202L1155C02 (February 4, 1992).

Relettered subsection (f), which is currently subsection (g), is amended to add a cross-reference to §3.290 of this title.

Subsection (h), which adopts by reference Texas Aircraft Exemption Certificate for Out-of-State Registration and Use, is deleted. Aircraft are addressed in new §3.280 of this title.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by incorporating into the rule current agency policy and by improving the rule's clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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 amendment is 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 section implements Tax Code, §§151.0101 (Taxable Services), 151.3111 (Services on Certain Exempted Personal Property), 151.329 (Certain Ships and Ship Equipment), 151.330 (Interstate Shipments, Common Carriers, and Services Across State Lines), 151.331 (Rolling Stock; Train Fuel and Supplies), 151.3291 (Boats and Boat Motors) and 152.089 (Exempt Vehicles).

Texas Register

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER	STATE AND LOCAL SALES AND USE TAXES
O	
RULE §3.297	<u>Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles</u>
ISSUE	03/10/2017
ACTION	Proposed

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

(1)Chapter 160 boat--A vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern, that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel, or other watercraft designed to be propelled by paddle, oar, or pole, and that is subject to tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors).

(2)Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A)used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B)used commercially for pleasure fishing by individuals who are paying passengers.

(3)Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(4)Licensed and certificated common carrier--A person authorized through issuance of a license or certificate by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common carrier. Certificates of inspection or safety do not authorize a person to operate as a licensed and certificated common carrier.

(5)Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, diesel electric, or other fuel, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled roadway maintenance equipment.

(6)Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(7)Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; motor homes; motorcycles; trucks; truck tractors; trailers; semitrailers; house trailers or travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and truck cab/chassis. The term does not include a nonrepairable vehicle and a salvage vehicle, as defined by §3.86 of this title (relating to Destroyed and Repaired Motor Vehicles).

(8)Operating exclusively in foreign or interstate coastal commerce--Transporting persons or property between a point in Texas and a point in another state or foreign country. A vessel that travels between a point in Texas and an offshore area or fishing area on the high seas, or between two points in Texas, is not operating exclusively in foreign or interstate coastal commerce.

(9)Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including but not limited to:

(A)high speed ground transportation systems that connect metropolitan areas;

(B)commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C)narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D)private industrial railroads operated on steel rails that connect directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(10)Rolling stock--A unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, and gondolas. Rolling stock also includes self-propelled trackmobile rail car movers and roadway maintenance equipment. Rolling stock does not include equipment used for intra-plant transportation or other nontraditional railroad activities and that is mounted on stationary steel rails or tracks but that are not part of, or connected to, a railroad. For example, cranes operated on steel rails or tracks and used to load or unload ships are not rolling stock.

(11)Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(12)Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b)[(a)] Carriers generally.

~~{(1)Licensed and certificated carrier--A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle, or pipeline as a common or contract carrier transporting persons or property for hire in the regular course of business. Certificates of inspection or airworthiness certificates are not the appropriate documents for authorizing a person to operate as a common or contract carrier. These documents relate to the carrier device itself rather than a person's right to operate a carrier business.}~~

~~(1)[(2)] Use tax is not due on the storage or use of repair or replacement parts acquired outside of Texas [this state] and actually affixed in Texas [this state] to a self-propelled vehicle that is used by [as] a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.~~

~~(2)[(3)] Use tax is due on the storage or use of tangible personal property [Except as provided under subsection (d) of this section, taxable items] brought into Texas [this state] to be assembled into a vehicle used by a common carrier to transport persons or property from place to place, unless the tangible personal property is otherwise exempt from sales and use tax under this section [-licensed and certificated carrier devices are not exempt from the taxes imposed by the Tax Code, Chapter 151, Subchapter D].~~

(3)[(4)] Sales tax is not due on the sale of tangible personal property [taxable items] to a common carrier if the tangible personal property is [such items are] shipped to a point outside of Texas [this state] using the purchasing carrier's facilities under a bill of lading, and if the tangible personal property is [such items are] to be used by the purchasing carrier in the conduct of its business outside [the State] of Texas.

~~{(5)Sales tax is due on licensed and certificated carrier devices purchased under valid resale or exemption certificates that are put to a use other than the one specified in the certificate. The sales tax is based on the fair market rental value of the licensed and certificated carrier device for the period of time used. At any time the person using the carrier device in a taxable manner may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).}~~

(c)[(b)] Vessels.

(1)Chapter 160 boats. The sale or use in Texas of a Chapter 160 boat is subject to boat and boat motor sales or use tax under Tax Code, Chapter 160, even if the vessel meets the definition of a commercial vessel. The lease or rental of a Chapter 160 boat is subject to limited sales, excise, and use tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax). For information concerning the imposition of the boat and boat motor sales and use tax, see §3.741 of this title (relating to Imposition and Collection of Tax).

(2)[(1)] Commercial vessels. Sales or use tax is not due on the sale by the builder of a commercial vessel that is not a Chapter 160 boat [in excess of eight tons displacement that is used exclusively for commercial purposes. For the purpose of this section, eight tons displacement means the weight of fresh water displaced by a vessel before being loaded with fuel, supplies, or cargo. Vessels not more than 65 feet in length measured from end to end over the deck, excluding sheer, are subject to Boat and Boat Motor Sales Tax under Tax Code, Chapter 160].

(3)Component parts. Sales and use tax is not due on the sale or use of materials, equipment, and machinery that become component parts of a commercial vessel or a marine cargo container. A component part is

~~[(2)][Sales or use tax is not due on labor to repair vessels, or machinery, equipment, or component parts of vessels in excess of eight tons displacement that are used exclusively for commercial purposes whether purchased by the builder or by a subsequent owner or operator. A component part is:]~~

~~{(A)a marine cargo container that is fully or partially enclosed to constitute a compartment of a permanent character intended for containing goods. It is strong enough to be suitable for repeated use, specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading. It is~~

~~designed for ready handling, particularly when being transferred from one mode of transport to another. The term "marine cargo container" includes the accessories and equipment of the container provided that such accessories and equipment are carried with the container. The term "marine cargo container" does not include chassis, vehicles, accessories or spare parts of vehicles.]~~

~~[(B)]~~[all] tangible personal property that is actually attached to and becomes a part of a commercial vessel or a marine cargo container. For example, items such as radios, radar equipment, navigation equipment, wenches, long-line fishing gear, and rigging equipment, that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, including items required by federal or state law, are component parts. Permanent coatings such as paint and varnishes are also component parts [qualified under paragraph (1) of this subsection]. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, [or] lubricants, first aid kits, tools, or polishes, waxes, glazes, or other similar temporary coatings.

(4) Repair and maintenance. Sales and use tax is not due on the labor to repair, remodel, restore, renovate, convert, or maintain a commercial vessel or a component part of a commercial vessel. Sales and use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service. For more information about the repair, remodeling, maintenance, and restoration of vessels that are not commercial vessels, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) [(3)] Sales or use tax is not due on the sale of materials [Materials] and consumable supplies, including items commonly known as ships' stores and sea stores, [sold] to the owner [owners-] or operator [operators] of a vessel [-ships or vessels] operating exclusively in foreign or interstate coastal commerce, if the materials and consumable supplies are for use and consumption in the operation and maintenance of the vessel, or if the materials and supplies enter into and become component parts of the vessel [such ships or vessels, are exempt from the sales and use tax].

~~[(A)] "Operating exclusively in foreign or interstate coastwise commerce" is defined, for the purposes of this section, as transporting goods or persons between a point in the State of Texas and a point in another state or in a foreign country. It does not include trips to and from offshore areas or fishing areas on the high seas, or trips between two points in the State of Texas.]~~

(B) Operation of the vessel in a manner other than in foreign or interstate coastal commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of ~~[such]~~ a vessel operating exclusively in foreign or interstate coastal commerce shall, when giving an exemption certificate, include on the certificate ~~[-set forth]~~ the title or position of the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

~~(6)~~~~(4)~~ Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on the sale or use of materials and supplies purchased by a person providing stevedoring services for a ~~[ship or]~~ vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the ~~[ship or]~~ vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

~~{(e) Aircraft other than aircraft used by licensed and certificated carriers.}~~

~~{(1) The term "aircraft" does not include rockets or missiles, but does include:}~~

~~{(A) a fixed-wing, heavier-than-air craft that is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings;}~~

~~{(B) a helicopter;}~~

~~{(C) an airplane flight simulator approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations, Part 121.}~~

~~{(2) Sales or use tax is not due on aircraft sold to a foreign government.}~~

~~{(3) An aircraft is not subject to use tax if it is hangared outside this state and is used more than 50% outside this state. In order to qualify for exemption from the use tax, owners or operators of aircraft entering this state must maintain sufficient records to show the percentage of time the aircraft was used in this state.}~~

~~{(A) In determining whether an aircraft is used more than 50% outside this state, the comptroller will consider all flight time in this state, including the portion of interstate flights in Texas airspace.}~~

~~{(B) The comptroller may examine all flight, engine, passenger, airframe, and other logs and records maintained on any aircraft brought into this state to determine whether it is used more than 50% in this state.}~~

~~{(4) An aircraft purchased outside this state is subject to Texas use tax, if not otherwise exempt, if it is hangared in this state. Some factors to be considered in determining whether an aircraft is hangared in this state include:}~~

~~{(A) where the aircraft is rendered for ad valorem taxes;}~~

~~{(B) whether the owner owns or leases hangar space in this state; and}~~

~~{(C) declarations made to the Federal Aviation Administration, an insurer, or another taxing authority concerning the place of storage of the aircraft.}~~

~~[(5)Sales or use tax is not due on supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts.]~~

~~[(6)Persons repairing or remodeling aircraft other than aircraft used by persons qualified under subsection (a)(1) of this section or paragraph (7) of this subsection should refer to §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).]~~

~~[(7)Sales or use tax is not due on aircraft purchased by a person who uses the aircraft to provide flight instruction that is recognized by the Federal Aviation Administration (FAA), under the direct or general supervision of an FAA certified flight instructor, and designed to lead to a pilot certificate or rating issued by a rule or regulation of the FAA. See §3.287 of this title (relating to Exemption Certificates).]~~

~~[(8)A student enrolled in an FAA approved program may claim a tax exemption when renting aircraft for flight training, including solo flights and other flights, under an instructor's direction. When completing an exemption certificate claiming sales tax exemption, the student must identify the flight school (name and address) or if the student is not enrolled in a flight school, the student must list his or her primary flight instructor with the instructor's address. The student must also retain copies of written tests and instructors endorsements. Without evidence that the student is in pursuit of a flight rating, he or she will owe tax on aircraft rentals.]~~

~~[(9)Texas sales or use tax is not due on aircraft sold to a person for use and registration in another state or nation before any use in Texas. Flight training in the aircraft in Texas and flying the aircraft out of state does not constitute a use of the aircraft in Texas.]~~

~~[(A)To claim the exemption, an exemption certificate, substantially similar in form and content to the certificate shown on the last page of this section, must be signed by both the seller and the purchaser at the time of purchase. The seller may accept a certificate if the seller lacks actual knowledge that the claimed exemption is invalid. The seller must provide a copy of the completed certificate to the Comptroller of Public Accounts within 30 days of the sale.]~~

~~[(B)By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation of intended use and registration.]~~

~~[(C)Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed \$500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.]~~

~~[(d)Licensed and certificated carriers, flight schools, and flight school instructors].~~

~~[(1)Sales or use tax is not due on aircraft used by persons defined in subsection (a)(1) of this section in the regular course of business of transporting persons or property for hire.]~~

~~{(2)The following items or services used in the repair, remodeling, or maintenance of aircraft or aircraft engines or component parts by or for a person qualified under subsection (a)(1) or (c)(7) of this section are exempt if purchased by the aircraft owner or operator, by the aircraft manufacturer, or by a repair facility.}~~

~~{(A)Machinery, tools, supplies, and equipment used directly and exclusively in the repair, remodeling, or maintenance. Included in the exemption is equipment used to sustain or support safe and continuous operations or to keep the aircraft in good working order by preventing its decline, failure, lapse, or deterioration, such as battery chargers or diagnostic equipment.}~~

~~{(B)Repair, remodeling, and maintenance services.}~~

~~{(3)Tax is not due on tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a person described in subsection (a)(1) or (c)(7) of this section or that is necessary for the normal operations of the aircraft and is pumped, poured, or otherwise placed in an aircraft owned or operated by a person described in subsection (a)(1) or (c)(7) of this section. Exempt component parts include air cargo containers that are secured or attached to the aircraft while in flight, radar equipment or other electronic devices used for navigational or communications purposes, food carts, smoke detectors, fire extinguishers, and seats. Pillows, blankets, trays, ice for drinks, kitchenware, or toilet articles are not exempt from tax.}~~

~~{(4)Tax is not due on electricity or natural gas used in the off-wing processing, overhaul or repair of a jet turbine engine or its parts for a person described in subsection (a)(1) of this section.}~~

~~{(5)Machinery, tools, and equipment that support the overall carrier operation such as baggage loading or handling equipment, garbage and other waste disposal equipment, or reservation making or booking machinery and equipment, do not qualify for exemption.}~~

~~(d)[(e)] Taxable uses of tangible personal property purchased tax free. Sales and use tax is due when tangible personal property sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information [Persons making a taxable use of tangible personal property purchased tax free, including aircraft purchased for flight training, should] refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).~~

~~(e)[(f)] Rolling stock, locomotives, and trains.~~

~~(1)Sales or use tax is not due on the sale or use of locomotives and rolling stock.~~

~~(2)Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items [if] required by federal or state regulation. Examples include, but are not limited to, telecommunication and signaling equipment, rails, ballast, cross ties, and roadbed moisture barriers. Items of~~

tangible personal property used to construct, repair, remodel, or maintain improvements to real property such as depots, maintenance facilities, loading facilities, and storage facilities are not supplies essential to the operation of locomotives and trains.

(3)Sales or use tax is not due on the amount charged for labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. Sales or use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service.

(4)[(3)] Sales or use tax is not due on the sale or use of electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock. For more information, see §3.295 of this title (relating to Natural Gas and Electricity).

(5)Sales or use tax is not due on the amount charged for labor or incorporated materials, whether lump-sum or separately stated, used for the construction of new railroad tracks and roadbeds. For more information, see §3.291 of this title (relating to Contractors). Sales or use tax is not due on the separately stated sales price of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. Sales and use tax is due on the sales price for labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f)[(g)] Motor vehicles [carriers]. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). For information on repairs to motor vehicles, see §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment.

~~{(h)Certificate. The comptroller adopts by reference the Texas Aircraft Exemption Certificate Out of State Registration and Use (Form 01-907). Copies of the certificate are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Account Maintenance, 111 E. 17th Street, Austin, Texas 78774-0100. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)}~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2017

TRD-201700748

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 9, 2017

For further information, please call: (512) 475-0387

