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Texas Comptroller of Public Accounts STAR System

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STATE OF TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS
STATE SALES AND USE TAX

Section 3.356. [Real Property Service](#) ►. (Texas Tax Code, secs. 151.057, 151.0101, 151.0048, 151.007).

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

(1) Employee - A person providing [services](#) ► for another for consideration where the employer has the right to control and direct the employee in the material details of how the work is to be performed, both under the contract of employment and in fact. The term also includes personnel provided by a temporary help [service](#) ►, as defined in paragraph (10) of this subsection.

(2) Employer - In determining which of several persons is the employer of an individual, factors which will be considered include:

(A) who exercises direct control over the details of how the work is performed by the employee;

(B) who pays the employee's salary;

(C) who withholds applicable federal taxes from the employee's salary;

(D) who provides employment-related benefits such as health insurance, eligibility to participate in a retirement plan, sick leave, vacation, etc., to the employee; and

(E) who has the right to terminate the employment of the individual employee.

(3) Garbage or other solid waste - Waste; refuse; sludge from a waste treatment

plant, a water supply treatment plant, or an air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from residential, industrial, municipal, commercial, mining, and agricultural operations, and resulting from community and institutional activities. The term does not include any of the following:

(A) solid or dissolved material in domestic sewage; or solid or dissolved material in irrigation return flows; or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26;

(B) waste materials which result from activities associated with the exploration, development, or production of oil, gas, geothermal resources, or any other substance or material regulated by the Railroad Commission of Texas pursuant to Natural Resources Code, sec. 91.101;

(C) any waste which requires specific licensing under Health and Safety Code, Chapter 401, and the rules adopted by the Texas Board of Health under that law, which for the purposes of this rule shall be referred to as radioactive waste;

(D) hazardous waste, as identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency or by other appropriate federal or state agency; or

(E) industrial solid waste, as that term is defined in Health and Safety Code, Chapter 361, with the exception of industrial solid waste which meets the definition of garbage or municipal solid waste.

(4) Landscaping - The activity of arranging and modifying areas of land, natural scenery and other areas, such as indoor or outdoor patios, for aesthetic effect, considering the use to which the land is to be put. The term includes adding, removing, or arranging natural forms, features, and plantings, including vegetation, and other features to fulfill aesthetic requirements. It includes the application of soil, soil additives, and amendments to prepare or maintain the planting area. Some examples are garden planting or maintenance, arborist [services](#), ornamental bush or shrub planting, tree planting or removal, tree surgery, pruning or spraying, and lawn sodding. The term does not include the addition of sprinkler systems, retaining walls, ponds, pools, or fences, or other construction activities or [services](#) provided by landscape designers or landscape architects such as consultation, research, preparation of general or specific design or detail plans, studies, specifications, or supervision, or any other professional [services](#) or functions within the definition of the practice of engineering or architecture. Landscaping [services](#) performed by landscape designers or landscape architects are taxable.

(5) Lawn and yard maintenance - Mowing, trimming, fertilizing, watering and any other treatment or [service](#) which may be performed on private or commercial yards or lawns. It also includes maintenance of trees and plants whether inside or outside a building. The term does not include clearing land for buildings, power line rights-of-way, pipeline rights-of-way, or maintenance on land belonging to a governmental entity when the [service](#) is required by the governmental entity.

(6) [Property](#) management company - A person who, for consideration, operates and manages all the activities at a [property](#) held by the owner for purposes of rental, such as: an office building, mall or other retail or office complex, an

apartment complex, duplex, or home. In the context of this rule, the responsibilities of a ◀property▶ management company must include, but are not limited to, securing tenants, hiring and supervising employees for operation or upkeep of the ◀property▶, receiving and applying revenues, and incurring and paying expenses derived from the operation of the ◀property▶ as directed by the owner. The term does not include a person performing taxable ◀services▶ at a manufacturing facility or at a ◀property▶ held by the owner for purposes other than rental.

(7) Residential or nonresidential building or grounds cleaning, janitorial, or custodial ◀services▶ - The activities of keeping the inside and outside premises of a building clean, orderly, and functional, including performing minor adjustments, maintenance, or repairs. Examples include, but are not limited to: window washing; floor, wall, and ceiling cleaning; collection of waste on the premises, whether from inside a building or on the grounds; chimney or duct cleaning; lighting maintenance, such as bulb and fuse replacement; the cleaning, disinfecting, and restocking of restrooms or lounge areas; cleaning or washing sidewalks, parking garages, or parking lots; and pool cleaning and maintenance. The term does not include activities such as painting; wallpapering; or performing significant repairs; nor domestic ◀services▶ such as those of a baby-sitter, maid or cook employed by a private household to provide domestic ◀services▶ for the benefit of the household.

(8) Structural pest control ◀services▶ - Activities performed for the purpose of identifying, preventing, controlling, or eliminating, by use of chemical or mechanical means, infestation of any of the following:

(A) insects, spiders, mites, ticks, ants, bees, and other related pests, wood infesting organisms, rodents, weeds, nuisance birds, or any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes or other structures or their contents;

(B) pests or diseases of trees, shrubs or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street; and

(C) the term "structural pest control ◀services▶" includes related activities, such as inspection or evaluation concerning the nature or extent of an infestation; reports; or performance of ◀services▶ to control pest or insect infestation.

(9) Surveying of ◀real▶ ◀property▶ - Activities performed to determine or confirm the boundaries of ◀real▶ ◀property▶, or to determine or confirm the location of structures or other improvements in relation to the boundaries of the ◀property▶ by the use of relevant elements of law, research, measurement, analysis, computation, mapping and land description. Examples include, but are not limited to, boundary recovery, residential surveying, lot surveying, title surveying, as-built title surveying, and right-of-way surveying. The term does not include activities performed after taxable surveying has been completed to search the surveyed area for items of archaeological or historic significance.

(10) Temporary help ◀service▶ - An individual, company, or corporation covered by Industry Group 7363, Group 736, Major Group 73 of the Standard Industrial Classification Manual, 1989, and includes an individual, company, or corporation that supplies personnel on a temporary basis to supplement a

customer's existing work force. In the context of this section, such temporary personnel must perform a [◀service▶](#) that is normally performed by the customer's own employees; the customer must provide all supplies and equipment necessary; and the temporary personnel must be under the direct or general supervision of the customer to whom the help is furnished.

(b) Responsibilities of persons providing [◀real property services▶](#) on both residential and nonresidential [◀real▶](#) [◀property▶](#). With the exception of terms defined by subsection (a)(6) and (10) of this section, persons providing [◀services▶](#) defined in subsection (a) of this section are performing [◀real property services▶](#). Persons performing [◀real property services▶](#) must obtain a tax permit and collect and remit sales or use taxes on all charges for [◀real property services▶](#).

(c) Resale certificates.

(1) A properly completed resale certificate may be used to purchase tangible personal [◀property▶](#) tax free if the care, custody, and control of the [◀property▶](#) is transferred to the customer as part of the [◀real property service▶](#). For example, a taxpayer purchases paper products to be left at the customer's premises when providing janitorial [◀services▶](#), or garbage dumpsters to leave on the customer's premises as a part of the garbage collection [◀service▶](#). Taxpayer may purchase the paper products and dumpsters tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the paper products, dumpster, and for the [◀services▶](#).

(2) A properly completed resale certificate may be issued for a [◀service▶](#) if the buyer intends to transfer the [◀service▶](#) as an integral part of a taxable [◀service▶](#). A [◀service▶](#) will be considered an integral part of a taxable [◀service▶](#) if the [◀service▶](#) purchased is essential to the performance of the taxable [◀service▶](#) and without which the taxable [◀service▶](#) could not be rendered. See sec. 3.285 of this title (relating to Resale Certificate; Sales for Resale).

(3) A properly completed resale certificate may be issued to purchase a taxable [◀service▶](#) tax free if the buyer intends to incorporate the [◀service▶](#) into tangible personal [◀property▶](#) which will be resold. If the entire [◀service▶](#) is not incorporated into the tangible personal [◀property▶](#), it will be presumed the [◀service▶](#) is subject to tax and the [◀service▶](#) will only be exempt to the extent the buyer can establish the value of that portion of the [◀service▶](#) actually incorporated into the tangible personal [◀property▶](#). If the buyer does not intend to incorporate the entire [◀service▶](#) into the tangible personal [◀property▶](#), the buyer may not issue a resale certificate but he may claim credit at the time of sale of the tangible personal [◀property▶](#) for the portion of the [◀service▶](#) that was actually incorporated into the tangible personal [◀property▶](#).

(d) Exemption certificates. Persons providing [◀real property services▶](#) may accept a properly completed exemption certificate in lieu of tax when the [◀service▶](#) is purchased by an exempt entity. See sec. 3.322 of this title (relating to Exempt Organizations), sec. 3.287 of this title (relating to Exemption Certificates) and sec. 3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(e) Landscaping, lawn, and yard maintenance provided by persons under 18 years old or by persons 65 years old or older. Charges for the performance of landscaping, lawn, and yard maintenance [◀services▶](#) (subsection (a)(4) and (5) of

this section) are exempt if performed by:

(1) a self-employed person under 18 years of age whose total receipts from providing landscaping, lawn, or yard maintenance are \$1,000 or less during either the preceding calendar quarter or the same calendar quarter of the preceding year; or

(2) an individual 65 years of age or older whose total receipts from providing landscaping or yard maintenance are \$5,000 or less for the four most recent quarters.

(f) Landfill charges connected with garbage collection [◀services▶](#). Persons providing garbage collection [◀services▶](#) may not separate in the bill to their customers the charge for garbage collection from the charge for use of the landfill for the purpose of reducing the amount upon which tax must be collected. The charge paid by the [◀service▶](#) provider for access to the landfill, while not taxable to the [◀service▶](#) provider, is a necessary expense in providing the garbage collection [◀service▶](#) and is not excludable from the fee to the [◀service▶](#) provider's customer for garbage collection.

(g) Garbage removal facilities. When a city, county, or any other entity provides a facility where garbage may be left and which will, at another time, be moved to a landfill, the fee charged to persons depositing garbage into such a facility is considered to be a charge for garbage collection and is taxable.

(h) Garbage collection [◀services▶](#) that may be excluded from tax. Persons providing collection [◀services▶](#) for customers having waste excluded from the definition of "garbage or other solid waste" may accept an exemption certificate from the customer in lieu of tax. The exemption certificate must state the type of waste being excluded, and that either the waste to be collected is totally excludable or that the customer has both taxable and nontaxable waste and the customer will be responsible for accruing tax on that portion of the charge which represents taxable [◀services▶](#). The customer may use any reasonable allocation for reporting tax on taxable [◀services▶](#) which is supportable by books and records.

(i) Unrelated [◀services▶](#).

(1) A [◀service▶](#) will be considered as unrelated if:

(A) it is not a [◀real property service▶](#), nor a [◀service▶](#) or labor taxable under another provision of the Tax Code, Chapter 151;

(B) it is not provided as a part of the taxable [◀service▶](#) and is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated [◀service▶](#) is distinct and identifiable. Examples of an unrelated [◀service▶](#) which may be excluded from the tax base include maintenance charges meeting the definition in sec. 3.357 of this title (relating to Labor Relating to Nonresidential [◀Real▶](#) [◀Property▶](#) Repair, Remodeling Restoration, Maintenance, New Construction, and Residential [◀Property▶](#)), engineering studies, and architectural or landscaping designs.

(2) When nontaxable unrelated [◀services▶](#) and taxable [◀services▶](#) are sold or purchased for a single charge and the portion relating to taxable [◀services▶](#)

represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the [◀service▶](#) provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable [◀services▶](#). However, if the charge for the taxable portion of the [◀services▶](#) is not separately stated at the time of the transaction, the [◀service▶](#) provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated [◀services▶](#). A customer may presume that a separately stated charge from a [◀service▶](#) provider for taxable [◀services▶](#) is reasonable, in the context of this section. The [◀service▶](#) provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the [◀service▶](#) or on a comparison to the normal charge for each [◀service▶](#) if provided alone. If the charge for exempt [◀services▶](#) is unreasonable when the overall transaction is reviewed, considering the cost of providing the [◀service▶](#) or a comparable charge made in the industry for each [◀service▶](#), the comptroller will adjust the charges and assess the [◀service▶](#) provider the additional tax, penalty, and interest on the taxable [◀services▶](#).

(3) Charges for [◀services▶](#) or expenses directly related to or incurred while providing the taxable [◀service▶](#) are taxable and may not be separated for the purpose of excluding these charges from the tax base. Examples include charges for meals, telephone calls, hotel rooms, or airplane tickets.

(j) Governmental entities. When garbage collection [◀services▶](#) are provided by a governmental entity without a specific charge being assessed, such as when this [◀service▶](#) is provided as a basic part of [◀services▶](#) funded by a tax or a set fee structure of the governmental entity, sales or use taxes are not due. This section does not apply if the fee changes each billing period based on quantity of consumption of tangible personal [◀property▶](#) or [◀service▶](#) provided individual [◀service▶](#) recipients.

(k) Local taxes. With the exception of garbage or other solid waste removal [◀services▶](#), local sales and use taxes apply to [◀services▶](#) in the same way as they apply to tangible personal [◀property▶](#). Generally, [◀service▶](#) providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the [◀service▶](#) is actually provided at a location outside that jurisdiction. However, transit sales taxes do not apply to [◀services▶](#) provided outside the boundaries of the transit area. If the [◀service▶](#) provider's place of business is outside a local taxing jurisdiction but the [◀service▶](#) is provided to a customer within a local taxing jurisdiction, local use taxes apply and the [◀service▶](#) provider is required to collect them. Local taxes for garbage or other solid waste removal [◀services▶](#) are allocated to the local taxing jurisdiction in which the garbage or other solid waste is located when its collection or removal begins.

(l) For general information on the collection and reporting responsibilities of providers and purchasers of taxable [◀services▶](#), see secs. 3.286, 3.374, 3.375, 3.424, and 3.425 of this title (relating to Seller's and Purchaser's Responsibilities; Imposition of the Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax, Administration of Use Tax; Collection by Retailer, Imposition of Sales Tax, and Administration of Use Tax; Imposition and Collection).

(m) Use tax. If a seller of a taxable [◀service▶](#) is not doing business in Texas or a specific local taxing jurisdiction and is not required to, or does not

voluntarily, collect and report the applicable Texas tax, it is the Texas customer's responsibility to report and pay the use tax directly to this office.

(n) ◀Property▶ management companies.

(1) Employees permanently assigned to one rental ◀property▶ are considered employees of that ◀property▶ when the ◀property▶ manager is reimbursed by the ◀property▶ owner on a dollar-for-dollar basis. On managed rental ◀properties▶, the employees remain assigned to the ◀property▶ while employed by successive owners or management companies. The reimbursement charge for taxable ◀services▶ performed on a managed rental ◀property▶ by management company employees assigned to it will not be taxable. However, if these same employees provide ◀real property services▶ for other ◀properties▶, the ◀property▶ manager must collect tax on the total charge for those ◀services▶. The management company owes tax on the purchase price of all taxable items purchased and provided to the employees providing ◀services▶ on managed rental ◀property▶.

(2) ◀Property▶ management companies whose employees provide taxable ◀services▶ as part of their overall management and operation of a rental ◀property▶ need not collect tax on those ◀services▶ if their value is insignificant.

(A) Such taxable ◀services▶ will be considered insignificant in any billing period in which their value is 5.0% or less of the amount charged by the management company for ◀services▶. The amount charged by the management company for taxable ◀services▶ is to be determined by deducting from the management company's total charge any mortgage payments made by the management company for the ◀property▶ owner and any amounts paid to persons other than employees of the management company for goods and ◀services▶.

(B) If the value of the taxable ◀services▶ exceeds the 5.0% limit, the entire amount charged by the management company will be considered taxable unless charges for taxable ◀services▶ are separately itemized and taxed as provided under subsection (i)(2) of this section.

(3) Purchases by the ◀property▶ management company for use by the ◀property▶ owner of taxable goods, labor, or ◀services▶ from third-party suppliers may be handled in either of the following ways:

(A) the management company may issue a resale certificate to the supplier and collect tax from the ◀property▶ owner on the itemized charge for the goods, labor, or ◀service▶; or

(B) the management company may pay tax to the supplier and collect from the ◀property▶ owner an amount equal to the total of the amount paid by the management company for the goods, labor, or ◀services▶ and the tax paid.

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