



Department of Finance
Treasury Division
Tax Compliance – Audit Unit
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The City and County of Denver imposes a 3.65% consumer's use tax on all construction materials, supplies, tools, and equipment used on a Denver construction job unless the vendor has charged Denver sales tax. Credit against the Denver use tax liability is allowed for a legally imposed sales tax previously paid, to the extent the rate does not exceed the combined rate in Denver of 7.65%. If sufficient sales tax has not been paid at time of purchase, the contractor is required to self-report use tax.

Denver also has an occupational privilege tax, which is due for any employee who earns at least \$500 within a calendar month while working in Denver. A total of \$9.75 per month per eligible employee must be remitted: \$5.75 withheld from the employee and \$4.00 paid by the business for each taxable employee, owner, partner or manager.

Please note that subcontractors, as well as general contractors, are deemed to be the end user of all materials, supplies, tools, and equipment used on a Denver job. Denver does not provide an exemption from sales or use tax for materials used on any construction project located in Denver including governmental or charitable.

Any contractor, as well as any subcontractor, who does work in Denver must be licensed with the Treasury Division to pay taxes. Taxes are not collected through any other licensing or permitting mechanism.

We encourage you to learn more about Denver taxes by going directly to the Denver Treasury Website at www.denvergov.org/treasury and click on the Tax Guide and Tax Rules links. Tax Rule #5, Tax Guides #61 (Occupational Privilege Tax) and #83 (Use Tax) are recommended for review. We also encourage you to consult with a tax professional when making decisions regarding application of tax to any portions of a proposal or operations.

If you have any questions please don't hesitate to contact Taxpayer Service at 720-913-9400 or by email at treasinfo@denvergov.org.

Thank you for engaging in business in Denver!



August 3, 2017

Construction Guide

- Denver views the contractor as the end-user of construction equipment, supplies, or materials. Therefore, Denver does not provide an exemption for construction or building materials used on any construction project located in Denver.
 - This includes governmental or charitable projects.
- Denver imposes a 3.65% consumer use tax on all construction supplies, materials, tools, equipment, and software used by a construction contractor on a Denver job.
 - Be aware of any items delivered into Denver along with the freight charges for those items as freight is also taxable.
- Use tax is due unless vendors charged the 3.65% Denver sales tax rate.
- Tools and equipment are subject to the 3.65% use tax on the cost or fair market value at the time of first use in Denver. Exceptions are:
 - Automotive vehicles required by law to be registered outside of Denver.
 - If the equipment will be used or stored in Denver for 30 consecutive days or less, a declaration completed prior to equipment being brought into Denver may result in a smaller tax liability.
- Credit is allowed for any legally imposed sales and use taxes previously paid on materials, supplies, tools, and equipment to any municipal corporation (city), county, and/or state to the extent the rate does not exceed the total combined rate of 7.65%.
- Occupational Privilege Tax is due on employees earning at least \$500 per month while working in Denver; this makes them a taxable employee.
 - Withhold \$5.75 for the employee portion and \$4.00 for the business portion for a total of \$9.75 per month per taxable employee.
- Denver does not provide an exemption for energy (natural gas, electricity, etc.) used in building construction.
- Use tax is also due on all diesel fuel used in equipment.
- As of July 1, 2017 water is exempt from Denver tax.
- Remind your subs to be aware of the use tax and OPT tax requirements in Denver and about becoming licensed with Denver.

City and County of Denver, Colorado

TAX GUIDE

Topic No. 83

USE TAX

The Denver Revised Municipal Code (DRMC) imposes use tax upon the privilege of using, storing, distributing, or consuming within the City, tangible personal property, products and certain services purchased at retail, when there has been no previous payment of a legally imposed sales or use tax equal to or greater than the Denver rate.

The purpose of the use tax is to raise funds for the payment of expenses of operating and improving the City and its facilities, and for the payment of the principal of and interest due upon any general obligation or special revenue bonds lawfully authorized and issued by and on behalf of the City.

Retailer's use tax is generally incurred when a non-resident vendor engages in business in the City by making retail sales and collects what would otherwise be termed sales tax from its Denver customers. Retailers use tax is the same as sales tax except that it generally results from a sale delivered into Denver by a vendor located outside the City. A vendor license is required. The fee for a two-year vendor license is \$50.

Consumer use tax is imposed upon the use, storage, distribution, or consumption of taxable tangible personal property, products and certain services purchased at retail within the City. When these items are first distributed, stored, used or consumed in the City more than one year after its retail sale, "purchase price" means its market value rather than the acquisition cost. A reduction to the amount of consumer use tax due may be allowed for a legally imposed sales tax paid to other taxing authorities for the same transaction.

However, certain tangible personal property, which has been owned and used for its intended purpose for more than one year before it is moved into Denver, is exempt from use tax. That exemption does not apply to: construction equipment, tools and machinery, construction building materials, and automotive vehicles. Consumer use tax is reported on Schedule B of the combined sales/use tax return. Use tax on special rate transactions is due at the special rates. There is no fee for a consumer use tax license.

Use tax license applications may be obtained by registering online through Denver's eBiz Tax Center at www.denvergov.org/ebiztax, from www.denvergov.org/treasury, or from the Taxpayer Service Unit of the Treasury Division at 720-913-9400.

EXAMPLE OF RETAILER USE TAX

BYN Corporation is located outside of Denver and makes retail sales into Denver. Since BYN Corporation has no Denver outlet, it would collect and remit retailer use tax on the purchase price.

EXAMPLES OF CONSUMER USE TAX

1. Flux-Air Corporation purchases coffee at a grocery store which did not collect any sales tax. The company is required to pay consumer use tax at the rate of 4.0%.

2. XYZ buys a new computer from an outlet in Chicago. The vendor does not collect any sales tax. XYZ must pay 3.65% consumer use tax on the purchase of this item. If the vendor had properly collected a State of Illinois and Chicago municipal tax, XYZ could be allowed a reduction to the use tax due to Denver.

RELATED TAX GUIDE TOPICS

Reduction Allowed for Previously Paid Sales on Use Taxes Sale and
Purchase of a Business
Sales Tax

- * DRMC Sections 53-91 through 53-165. Use Tax
- * Rules Implementing the Exemption for Certain Food and Drink under the City Retail Sales and City Use Tax
Articles of the Denver Revised Municipal Code

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT DENVER TAX LAW FOR THIS INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE DRMC AND APPLICABLE RULES AND REGULATIONS.

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City and County of Denver, Colorado

TAX GUIDE

Topic No. 61

OCCUPATIONAL PRIVILEGE TAXES (OPT or HEAD TAX)

Denver imposes two separate but related Occupational Privilege Taxes (OPT). The Business OPT is imposed on businesses operating in Denver and the Employee OPT is imposed on individuals who perform sufficient services within Denver to receive as compensation at least five hundred dollars (\$500) for a calendar month.

IMPOSITION OF THE OPT TAXES

Employees who perform sufficient services in Denver to receive compensation of at least \$500 per month meet the requirement of a taxable employee and are liable for the Employee OPT to be withheld by the employer at a rate of \$5.75 per month. The employer is also required to pay the Business OPT at a rate of \$4.00 per month for each taxable employee. Additionally, the employer is required to pay the Business OPT at a rate of \$4.00 per month for each owner, partner, or manager engaged in business in Denver regardless of how much they earn.

Any entity which performs any business, trade, occupation, or profession of any kind, is liable for a minimum of \$4.00 per month for each month in which that entity has any activity in Denver related to its business, trade, occupation, or profession, regardless of whether a permanent location is maintained in Denver.

Businesses with owners, partners or proprietors engaged in business in Denver are subject to the business tax for each owner, partner, or proprietor even if that person pays the employee tax through an employer at a different job. The \$500 earnings test does not apply to owners or partners since they are not employees.

Individuals with more than one Denver employer are required to pay the tax only once. To avoid duplicate taxation, the employee should submit a Form TD269 to secondary employers. This form can be obtained by calling 720-913-9400. With a properly executed Form TD269, the secondary employer will not withhold the employee OPT. However, the employer is still required to pay the \$4.00 business tax if the employee is otherwise taxable for OPT.

If an individual works for two or more employers in two different jurisdictions imposing a head tax, such as Denver and Aurora, the employee will be liable for the employee OPT in each jurisdiction if the earnings requirements are met in each jurisdiction.

CORPORATION

A corporation is a separate legal entity, apart from any "owners." As such, a corporation has only employees, not "working owners." All employees who perform sufficient services to receive \$500 per month are taxable employees and are subject to both the Employee and Business OPT.

LIMITED LIABILITY COMPANY

A limited liability company (LLC) is a legal entity formed under state law. The IRS does not recognize an LLC for federal income taxes and requires that an LLC declare itself as a corporation, partnership, or “disregarded entity” (for single member LLC’s only). Denver imposes EOPT on an LLC based on its declaration with the IRS.

- Corporation – see above.
- Partnership – all “working members” are taxed as owners.
- Disregarded Entity – the single member is taxed as an owner.

DOMESTIC HELP

Individuals or households that employ domestic help (domestics) are employers as defined in D R M C Section 53-240(2), and are required to withhold and remit the Employee OPT from the domestics that they employ. Even though the individuals or households meet the definition of employer they are not subject to the Business OPT because they are not engaged in business in the City.

Domestic help may be employees or they may be self-employed. Federal Insurance Contribution Amount (FICA) withholding status provides guidance as to whether the domestic help is an employee (FICA withheld) or is self-employed (FICA paid by individual only). If the domestic help is self-employed, they are required to set up an OPT account with the Department of Finance and they are required to pay the Business OPT.

EXEMPTIONS

Employees who perform services for a single employer, but whose work is performed in more than one jurisdiction that imposes an occupational privilege tax, are required to pay the tax only in the jurisdiction in which they spend the majority of their working hours. This exemption applies to the employer as well as to the employee.

There is no exemption for an employee who performs services for the same employer in Denver and a municipality that does not impose an occupational privilege tax. It does not matter if the employee spends the majority of his/her time in the other municipality. As long as the employee meets the \$500 earnings requirement in Denver, she/he is still subject to Denver OPT, as is the employer.

There is also an exemption provided in the Business OPT for governmental or charitable entities whose employees are performing duties consistent with the organization's exempt status. The Employee OPT provides no such exemption and all liable employees are required to have the tax withheld and remitted by their employer.

OCCUPATIONAL TAX RETURNS

- A. Businesses with ten (10) or more employees must file and remit taxes on a monthly basis. Businesses with less than ten (10) employees may file and remit quarterly.
- B. Monthly payments are due the last day of the month following the month in which the liability was incurred. Quarterly payments are due the last day of the month following the three-month period in which the liability was incurred.
- C. Individuals, sole proprietors, and partnerships without employees subject to the tax have the option to pay for the entire calendar year. This annual payment is due

January 31st of each year.

EXAMPLES

1. Build-To-Suit Construction Company has its offices in Denver and has many in-progress projects in Colorado. All of the employees perform sufficient services to receive compensation of at least \$1000 per month, including those on the supervisory staff, Bill, Joe, and Al.

Bill has the Denver City Park project; therefore, his team is subject to the Denver OPT.

Joe is working on a house in Aurora. Since the crew is working full time in another city that also collects OPT, the tax is paid to Aurora.

Jim is working on both Bill's and Joe's crews as the need arise. For the current month, Jim has worked 88 hours in Denver and 80 hours in Aurora. Since Jim spent the majority of his time in Denver, he is liable for Denver EOPT and not Aurora OPT.

Al's crew is working on an extended project in Grand Junction. Since Al and his crew are not performing sufficient services to earn at least \$500 per month in Denver, they would not be liable for any tax even though the business is based in Denver.

2. Edward is currently under contract as a butler to an oil executive and his family at their estate in Denver. He lives in the servant's quarters at the estate and is always on-call, therefore, having no set hours. Edward is treated as being self-employed and he pays all of his own employment taxes.

Included in Edward's responsibilities is the supervision of four additional domestics: a cook, a maid, a gardener, and a chauffeur, who are employed by the oil executive. Each of these employees has a standard set of duties that must be performed within the hours set forth by Edward. The oil executive pays the employment taxes, including FICA, for these employees.

For OPT purposes, Edward is treated as self-employed and is required to remit the \$4.00 per month business OPT for himself. Since the other four domestics on staff are treated as employees, all employment taxes are withheld and remitted by the employer. The oil executive must withhold and remit \$5.75 per month Employee OPT for each of them. However, the household is not a business; therefore, the oil executive does not owe the Business OPT for those four individuals.

3. XYZ, Inc., sets up a shell corporation under the name of ABC, Inc., in order to take advantage of certain income tax benefits. Both corporations are located in downtown Denver. The employees of XYZ perform all business functions of ABC, which leaves ABC with no employees.

Every person having a fixed or transitory situs within the City is required to pay the Business Tax for the first owner, partner, manager or employee. Even though ABC has no taxable employees in the City, it is still required to pay the \$4.00 per month Business OPT.

4. M & S, Inc., a small business within the City, is owned by Madeline and Scott. They are the only employees of the corporation and both of them work fifty weeks per year. In lieu of receiving periodic paychecks, Madeline and Scott each receive an annual salary of \$25,000 on December 31 of each year. The salaries are recognized in a salaries payable liability

account on the company's books.

In their third year, the business was struggling and Madeline and Scott agreed not to draw a salary. Although Madeline and Scott only get paid once per year, and in fact did not get paid at all in the third year, they are liable for the \$5.75 per month Employee OPT for twelve months per year since they performed sufficient services to receive at least \$500 in compensation, which is reflected in the accrued salaries account for each calendar month of the year. The corporation is required to remit for every taxable employee, along with the \$4.00 per month Business OPT for each taxable employee.

If Madeline and Scott were a partnership and all other facts in the example were the same, they would not be liable for the Employee OPT for twelve months per year because they would be owners, not employees. The partnership however, would be liable for the Business OPT for each partner for each month.

5. John Foundation has applied for and received a letter of exemption from the City and County of Denver as being an active 501(c)(3). Its headquarters are located in Denver. John Foundation would be exempt from the \$4.00 per month Business OPT per employee, but would be responsible for collecting and remitting the \$5.75 per month Employee OPT from each employee that performs sufficient services to receive at least \$500 in compensation per month.
6. Joe's Plumbing Services (Joe's), headquartered in Golden, Colorado, provides plumbing services and repairs throughout the Denver metropolitan area. Work is typically done at a customer's home, not Joe's headquarters.

Mark, an employee of Joe's makes, \$20 per hour. During the month of May, Mark performed repair and services within the City and County of Denver for a total of 76 hours, earning \$1,520.00. Since Mark has met the threshold of performing services sufficient to earn at least \$500.00 in Denver during the month of May, Joe's should withhold \$5.75 (the Employee OPT) plus \$4.00 (Business OPT) for a total of \$9.75. Joe's would do this for each employee who has met the \$500 threshold and remit the total amount withheld on their periodic OPT return.

If no employees met the threshold, Joe's would still owe the \$4.00 Business OPT, since the company was engaged in business in Denver.

* DRMC Sections 53-237 through 53-325 – Employee and Business Occupational Privilege Taxes

The complete Denver Tax Guide, the Denver Revised Municipal Code (DRMC), tax forms, and other related information and forms are available on-line at www.denvergov.org/treasury.

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Revised 07/17



CITY & COUNTY OF DENVER, COLORADO

DEPARTMENT OF REVENUE

TREASURY TAX RULE 005

RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAX ON SALES AND USE OF TANGIBLE PERSONAL PROPERTY ACQUIRED BY CONSTRUCTION COMPANIES

EFFECTIVE 9/4/2001

The following rules and regulations are promulgated in accordance with the requirements of Sections 53-23 and 53-94 of the *Denver Revised Municipal Code* and by virtue of the authority vested in the Manager of Revenue by Articles II and III of Chapter 53 of said Code.

- 1) Any person that performs work in accordance with an agreement, oral or written, on real property for another falls within the terms “contractor” and “construction company” as those terms are used in this regulation. The terms are intended to include all building constructors, excavators, highway and road constructors, electrical, plumbing, and heating constructors, and others engaged in the construction, reconstruction, repair, or wrecking of any physical structure that is part of real estate.
- 2) Construction companies that purchase in the City tangible personal property that is to be incorporated into a building or structure by them pursuant to agreement shall be regarded for the purposes of applying the City Retail Sales Tax Article (Article II of Chapter 53 of the Denver Revised Municipal Code) as purchasers or consumers after a retail sale, and, therefore, personally liable for the payment of the sales tax to the vendor of said personal property (herein sometimes called “materials”). Further, unless the sales tax has been paid, construction companies must pay the use tax imposed by Article III of Chapter 53 of the Denver Revised Municipal Code on the storage, use, or consumption of all materials purchased for construction jobs if the storage, use, or consumption of the materials is to be within the City. The construction company must pay the sales or use tax directly to the vendor of the materials if the vendor is licensed and authorized to collect and return such tax to the City; however, if the vendor is not so licensed and authorized, then the construction company or contractor shall pay the tax directly to the Manager of Revenue and file a consumer’s use tax return.

- 3) Because the contractor is deemed to be the consumer of the materials used in construction, the contractor may not avoid the payment of the sales or use tax by use of provisions in the construction agreement or by use of the name of a tax-exempt entity in an invoice or purchase order as the purchaser, whether or not the contractor is indicated thereon as the agent of such tax exempt entity. No exemption certificate issued by the State Department of Revenue or any other taxing authority will be recognized as a basis for exemption from the sales or use taxes levied by the City against construction companies.
- 4) Sales of stoves, refrigerators, washing machines, clothes dryers, storm windows, storm doors, patio covers, replacement garage doors, carpeting, fencing materials, prefabricated swimming pools, lawn sprinkling system materials, nursery stock, desert landscaping materials, sod, and other completed units of personal property to be affixed to, installed in, or used in conjunction with a structure and which can be removed without substantial damage to the structure and which can be removed without altering the functional use of the structure shall not be regarded as work performed by a contractor. As with all retail sales, the tax will be collected from the purchaser by the vendor. In the event a vendor of an appliance such as those named above should contract and charge for services necessary to the installation of the item, and the installation or service charges are indicated separately in the purchase order, invoice, or agreement pertaining to the installation of the item, the sales or use tax will be imposed only on the purchase price of the item; on the other hand, if installation charges are not separately stated from the purchase price of the appliance or similar item, the tax will be calculated based upon the total price of the purchase order, invoice, or agreement.
- 5) All purchases of tools or equipment within the City are subject to the Sales Tax Article, and all tools or equipment used or stored within the City are subject to the Use Tax Article. The prior use or storage in another jurisdiction of such property brought into the City shall not diminish the use tax liability to the City except that 1) it shall be reduced pro rata to the extent that a sales tax has been paid to the City or another municipality or county based on the purchase price of the property and 2) the use tax liability to the City shall be measured by the purchase price of the property except when the property is first used or stored in the City more than one year after its retail sale. The use tax will be measured by the market value of the tools and equipment, if less than the purchase price, when such property is first used or stored in the City more than one year after its retail sale; otherwise, if the market value is more than the purchase price, the use tax will be measured by the purchase price.
- 6) Any person who contracts to provide services including use of machinery or equipment at an hourly, daily, or other periodic rate is presumed to be a lessor of tangible personal property and must collect the sales or use tax on the fees charged for the use of such machinery and equipment. If the charge for the operator or operators of the equipment or machinery is not segregated from the rent for the hire of the machinery or equipment, the measure of the tax will be based on the total fee charged. Contractors who contract to provide their services including use of machinery or equipment on a lump-sum job basis are required to pay the sales or use tax only upon the purchase price or market

value (see ¶5, above) of the machinery or equipment used in their contracting operations in Denver.

- 7) A vendor or retailer that also acts in the capacity of a construction company must remit the tax on materials removed for use in its construction jobs from its own stock of goods held for sale, and must base the tax on its cost of the materials so withdrawn.
- 8) Under customary circumstances, a City Retail Sales License will not be issued to a construction company because it is presumed to be the user or consumer of the tangible personal property acquired by it for use in fulfilling construction agreements.
- 9) The provisions of the Sales and Use Tax Articles pertaining to construction companies are equally applicable to subcontractors.
- 10) Construction companies that manufacture the materials or other items of tangible personal property that are to be incorporated into a structure in the fulfillment of an agreement of the construction company shall be liable under the Sales or Use Tax Articles to the same extent as other contractors are liable with the following exception: if a manufacturer-contractor manufactures or compounds the items to be incorporated or installed in a structure, the tax shall be measured by the gross value of all materials, labor, and services used in manufacturing the items. This paragraph is inapplicable to a manufacturer of tangible personal property for which no retail market exists.
- 11) Sales within the City of tangible personal property to be delivered and used outside the City by a construction company may be tax exempt if delivery of the property is made outside the City to the business address of the construction company or place of intended use by common carrier, by a truck owned and used by the vendor for delivery of such materials, or if the materials are mailed to the outside address.
- 12) A construction company, including a company that sells construction materials, acquiring or withdrawing from its own stock materials within the City strictly for use in its construction work in a municipal or county jurisdiction in which a use tax a) is collected by that jurisdiction in advance of the purchase of materials and b) is based upon an estimate made at the time a building permit is obtained from that jurisdiction for the work, shall receive credit for the use tax already paid against the sales or use tax liability imposed by the City, to the extent the foreign tax does not exceed the tax levied by the City. In order for any credit to be given, however, the property acquired or withdrawn from stock must actually be used in the municipal or county jurisdiction first collecting a use tax on the basis of the estimate made at the time the building permit is obtained.
- 13) The above rules supersede any conflicting rules previously issued by the Manager of Revenue regarding the assessment and collection of sales and use taxes on sales and use of tangible personal property by construction companies.

**BY ORDER OF THE MANAGER OF REVENUE
CHERYL COHEN-VADER**

J. WALLACE WORTHAM, JR.
City Attorney

By
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