City and County of Denver, Colorado

TAX GUIDE

Topic No. 69

SALE AND PURCHASE OF A BUSINESS

Denver sales/use tax is due on the purchase price paid for tangible personal property, such as furniture, fixtures, equipment, vehicles and supplies (other than inventory held for resale), which is included in the purchase or sale of a business. The tax is based on the amount paid or on the fair market value of the tangible personal property at the time of the sale. Evidence of the taxable purchase price includes a bill of sale, amounts allocated in the sale or purchase agreement, and amounts shown in the accounting records of the purchaser. When no determination of value of the personal property has been made by the purchaser, the current valuation of the property by the Assessor and independent appraisals may also be considered in determining the taxable amount.

Property acquired by the lienholder through foreclosure or repossession is not a sales/ purchase transaction subject to the tax; however, any subsequent sales/purchases of the tangible personal property from the lienholder, or business use by the lienholder are subject to tax. Additionally, the purchaser of the foreclosed or repossessed tangible personal property takes on the liability for any delinquent taxes owed that are tied to the property.

When a business is acquired through the assumption of outstanding debts, tax due may be based on amounts reasonably reflecting fair market value.

When a business is purchased or acquired, the new owner takes the property subject to delinquent taxes owed by the former owner but not exceeding the value of the property acquired.

EXAMPLES

1. ABC Company purchases the assets of XYZ Company for $150,000. The sale and purchase agreement shows the following allocations: Resale inventory $50,000; goodwill $10,000; accounts receivable $35,000; furniture and fixtures $15,000; machinery and equipment $40,000. The taxable base is $55,000 and includes the furniture, fixtures, machinery, and equipment.

2. DEF Company purchases the assets of UVW Company for $150,000 and no allocation is shown in the sale and purchase agreement. An appraisal determines the value of the furniture and fixtures is $25,000 and the machinery and equipment is $50,000. These amounts are entered in the fixed asset ledger. The taxable base is $75,000.

3. The Third National Bank forecloses on the XYZ Corporation. The business is closed until the bank can find a buyer. No tax is due on the bank's acquisition of the business assets through foreclosure as long as they are held for resale and the bank does not put the assets to taxable use.

   In the example above, if the bank operates the business while seeking a buyer, then the bank's acquisition of the business assets through foreclosure for use in the business operations may be subject to tax. The taxable base would be the amount of the debt, appraised value of the personal property or the amount recorded on the books of the bank, if the recorded amounts reasonably reflect fair market value.

* DRMC Section 53-24(21) Definitions – Purchase Price
* DRMC Section 53-24(23) Definitions – Purchase or Sale
* DRMC Section 53-25(1). Imposition of tax.
* DRMC Section 53-38. Return required upon sale of business; lien on purchaser.
* DRMC Section 53-95(24) Definitions – Purchase Price
* DRMC Section 53-95(26). Definitions – Purchase or Sale
* DRMC Section 53-96(1). Imposition of tax.
* DRMC Section 53-106(1). Return required upon sale of business; lien on purchaser.

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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