City and County of Denver

Construction Contractors Tax Tutorial
The tax rates used during this presentation were valid and correct at time of recording. Rates may have changed since the recording, please visit www.denvergov.org/treasury for Denver’s tax rates and www.colorado.gov/tax for current state wide tax rates.
Construction Contractors

Sales or Use Tax as it Applies to Construction Contractors

- Contractors are not retailers
- Contractors are the final consumer or end-user
- The lump-sum price charged by contractors to customers for work performed includes all cost, such as materials, labor, overhead, profit and the sales/use tax paid by the contractor on materials, supplies, equipment, rentals etc.
Construction contractors include general contractors, subcontractors, and others engaged in the construction, repair, reconstruction, or wrecking of any physical structure that is part of real estate.

- Examples: Electricians, plumbers, carpenters, HVAC, building constructors, highway/road contractors, excavators, demolition companies, etc.
Businesses that provide completed units of personal property to be affixed to, installed in or used in conjunction with a structure will be regarded as retailers, not contractors if the property can be removed without substantial damage to the structure and without altering the functional use of the structure.

- Examples of completed units include appliances, windows, cabinets, fencing, carpet, etc.

- Examples of completed units for road and highway contractors include traffic lights and signals and any type of signage included in the contract.
Contractors pay **sales** tax directly to the retailer
- Provided the retailer is licensed with the City of Denver
- Sales tax is not optional

Contractors pay **use** tax directly to Denver when the retailer is unlicensed or fails to charge them sales tax
- Accrue and remit use tax directly to Denver
- Use tax registration is required
- Returns filed on monthly or quarterly basis

Currently The City and County of Denver does **not** collect use tax on building permits
Materials picked up at a Denver retailer’s location to be used in Denver or delivered to a job site in Denver are subject to Denver’s sales tax.

Materials picked up in Denver to be used outside of Denver are subject to Denver’s sales tax unless a use tax has been paid upfront on a building permit to a municipality in which the materials are to be used.

There is no exemption in the sales tax ordinance for temporary storage of construction materials in Denver - Sales tax must be collected by licensed Denver retailers.

Materials delivered and used outside of Denver are not subject to Denver sales tax.
Construction Materials – Use Tax

Materials purchased outside Denver and brought into Denver are subject to Denver use tax

- Unless a legally imposed sales/use tax was properly paid to another jurisdiction
- Credit for the sales tax paid can not exceed the Colorado and Denver combined rate of 8.31%
Construction Use Tax – Temporary Storage Exemption

Construction use tax temporary storage exemption

❖ Applies to building materials only

❖ Materials for use outside of Denver which are brought into Denver for temporary storage are exempt from Denver use tax

❖ Stored materials which are subsequently used on a Denver job would be subject to Denver use tax

❖ Remember: There is no temporary storage exemption in the Denver sales tax ordinance

DRMC 53-97(15)
Construction Supplies / Leased Equipment

- Contractors are required to pay Denver sales or use tax on all supplies purchased in Denver or used on a Denver job
  - Denver gives a credit for any properly imposed sales tax paid to another municipality, county and/or state
  - Examples: safety supplies, first aid supplies, scaffolding, barricades, job site office supplies, small tools, work clothes, etc.

- Contractors are required to pay sales or use tax on all equipment leases and rentals used on a Denver job
  - For equipment leased in another city/county, sales/use tax is due to Denver after the initial 30 day rental period
  - Charges for the operators of leased equipment must be separately stated or the entire rental charge is subject to Denver sales/use tax

Tax Rule #5 ¶6

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Off Road Construction Equipment

- Equipment one year old or less
  - Sales/Use tax based on the full purchase price at time of first use in Denver
  - Credit for legally imposed sales/use tax up to 8.31%

- Equipment over one year old
  - Sales/Use tax based on the fair market value at time of first use in Denver
  - Credit, on a dollar for dollar basis, for legally imposed sales/use tax up to 8.31%

- Example
  - Purchase price at 1/1/95: 100,000
  - Sales tax paid at 1/1/95 @ 5%: 5,000
  - FMV at first use in Denver on 1/1/2015: 50,000
  - 8.31% combined rate on FMV on 1/1/2015: 4,155
  - Less: Dollar for dollar credit for sales tax paid: (5,000)
  - Tax due Denver: -0-

DRMC 53-106(2)
Tax Rule #5 ¶5

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Off Road Construction Equipment (continued)

- Equipment located in Denver for 30 days or less
  - Tax proration: $\frac{1}{12}$th of tax due for each 30 day period or less
  - Declaration must be made prior to the equipment being brought into Denver
  - Multiple declarations may be filed but not for consecutive 30 day periods

- SME Registration
  - Required by the State of Colorado, plates or tags issued by county
  - Registration required in the county where equipment is primarily operated, maintained and stored
  - Specific ownership tax is collected for annual registration
  - SME registration fees are not a sales or use tax and credit cannot be given

DRMC 53-106(2)
Tax Rule #5 ¶5

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Construction Fuel and Energy

- Any fuel (except gasoline) used to power off-road equipment is subject to sales or use tax
  - Examples: Diesel fuel, propane, kerosene, etc.
- No exemption from Denver sales/use tax for energy (natural gas, electricity, etc.) used in construction
Contractors that manufacture tangible personal property are required to pay sales or use tax on the full manufactured cost including:

- Labor, overhead, and materials
- Installation labor is not subject to tax
- Examples include metal handrails, staircases, platforms, door, window coverings, etc.

Road and highway contractors that produce their own aggregate, concrete, or asphalt are required to pay sales or use tax on the full manufactured cost of the product including:

- Batch plant labor, batch plant overhead, materials, and material hauling charges to batch plant
- Denver sales/use tax due on batch plant – same rules as for off-road equipment
Subcontractors

- Subcontractors that meet the definition of a construction contractor are generally responsible for their own taxes to the same extent as the general contractor.
  
  - General contractors should ensure that their subcontractors are in compliance with the Denver tax requirements.

- Contractors that write “subcontracts” for material purchases which state “tax is included” should ensure the retailer is licensed to collect and remit the tax to Denver.
  
  - If the retailer does not collect sales tax, use tax is still due to Denver regardless of what the contract says.
Denver does not exempt contractors who perform work on tax-exempt entities
- Schools, churches, government office buildings, highway and road projects

Denver sales or use tax is **always** due on construction materials, supplies, and equipment used on Denver projects

- No exemption certificate issued by the Colorado DOR, nor any other taxing authority, will be recognized as a basis for exemption from the Denver sales or use tax
  - The State of Colorado exemption is for building materials **only** which are used on jobs for tax-exempt entities and is for Colorado state tax **only**

- A contractor cannot avoid paying sales or use tax on materials by having the exempt entity use its exemption to purchase the materials

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THIS CONCLUDES OUR PRESENTATION ON CONSTRUCTION CONTRACTORS

CONTINUE YOUR DENVERTAX EDUCATION BY VIEWING OUR OTHER TAX TUTORIALS