



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**

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By
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