



CITY & COUNTY OF DENVER, COLORADO

DEPARTMENT OF FINANCE

TREASURY TAX RULE 001

RULES REGARDING THE ASSESSMENT AND COLLECTION OF SALES AND USE TAXES ON THE SALES AND USE OF NEWSPAPERS AND OTHER PUBLICATIONS

EFFECTIVE 1/1/2015

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* ("D.R.M.C.") and by virtue of the authority vested in the Manager of Finance ("Manager") by Articles II and III of Chapter 53 of the D.R.M.C.

1. As used in these Rules, the definitions in Chapter 53 of the D.R.M.C. shall apply, unless the context clearly requires a different meaning.
2. The sale and purchase, or use, of all written publications, including newspapers, magazines, catalogues, books, directories, maps, newspaper clippings and mailing service or listings, revision services, and trade journals, are subject to taxation under Article II (Sales Tax Article), Chapter 53 of the D.R.M.C., or Article III (Use Tax Article), Chapter 53 of the D.R.M.C. Sales-for-resale of such publications to vendors (a) who are licensed as retailers pursuant to said Sales and Use Tax Articles and the General Licensing Provisions of the D.R.M.C., and (b) who sell such publications to purchasers from commercial locations, such as places of retail business or vending machines, shall be considered to be wholesale sales. All other sales by publishers or vendors of such publications shall be presumed to be retail sales on which the publisher or vendor must collect and remit the sales tax, or, in the case of a publisher outside the city, after which a use tax must be paid on the privilege of use of the publication in the city. The presumption may be rebutted by such reasonable proof as the Manager deems adequate.
3. Sales of newspapers by publishers or licensed retailers to independent news carriers or other independent distributors who are neither licensed as retailers by the city nor selling their publications from commercial locations shall be presumed similarly to be sales at retail and taxable transactions. The tax in such cases shall be measured by the purchase price paid by the news carrier or distributor to the publisher or licensed retailer. The term

“news carriers” as used herein shall mean those persons delivering or hawking newspapers on regularly established routes or at random locations.

4. In cases in which a publication is delivered or sent to a subscriber in the city as a result of a subscription to the publication being sent to a publisher located outside the city, but having commercial and tangible contacts with the city, the use of the publication within the city is subject to the use tax, and the publisher is required to obtain a City Retail Sales License and collect the tax and return it to the city. If, however, the publication is printed in the city and delivery is made outside of the city by mail, common carrier, or the publisher’s truck, the transaction is not taxable.
5. The distribution of newspapers, trade journals, advertising pamphlets, circulars, leaflets, and similar items, which are distributed free of charge by any means, such as car-to-car or house-to-house delivery, or by being included in and distributed as part of a newspaper, are exempt from the sales and use taxes. However, a tax must be paid by the advertiser or distributor, or whoever pays for the preparation and printing of the publication, because the advertiser, distributor, etc., is presumed to be the user and consumer of the publication after the retail sale thereof. If the printer is licensed as a retailer by the city, the tax must be collected by the printer. If the printer is not licensed by the city, the purchaser must pay the tax to, and file a Consumer’s Use Tax return with the city directly.
6. Publishers or printers of circulars, trade journals, etc., who themselves through their employees or agents distribute them free-of-charge must pay a tax but only based on the purchase price of the items used in the publication, such as printers ink, paper and so forth, for the publishers or printers are, in those cases, the ultimate consumers of the items used in publishing the circulars, trade journals, etc., and the publication is not thereafter sold at retail. If the carrier receives as compensation the total amount charged by the publisher to the purchaser, the distribution shall be considered a free handout by the publisher or printer thereof.
7. Publications vended through vending machines, located within the city, are subject to the sales tax and the vendor must, regardless of the price of the publication, pay over to the Manager an amount equivalent to the applicable tax rate in effect per the D.R.M.C. of gross sales made through vending machines.
8. All sales of publications by persons exempt from taxation, except the federal and state governments, and their agencies, are taxable to the same extent as sales by non-exempt persons.
9. Sales at retail of post cards or envelopes which have printed material added by a printer after having been acquired by or on behalf of the printer from the United States Postal Service are taxable, but the purchase price upon which the tax is based shall have deducted there from the postage.
10. Persons rendering services consume, many times, tangible personal property incidental to rendering services. The sales tax, and where applicable, the use tax, apply to the sale or use of such tangible personal property. If these persons rendering services, also sell tangible personal property to their customers, they become retailers with respect to such

sales and must obtain the Retailer Sales License, collect taxes on such sales, file returns of taxes collected, and remit the taxes as measured by the purchase price of their sales.

11. In determining whether a transaction involves the sale of tangible personal property, or the performance of a service with a transfer of tangible personal property only occurring incidental to the performance of the service, the Manager will examine the transaction from the purchaser's point of view. If the essence of the transaction is, from the purchaser's point of view, the acquisition of service, as such, the transaction or the use after sale is not taxable even though some tangible personal property is incidentally transferred with the performance of the service. However, if a service is performed in the production of tangible personal property, and if the essence of the transaction, from the customer's point of view, is the acquisition of the tangible personal property, the transaction, or use after sale, is taxable. For example, the transfer of an original manuscript by the author thereof for a price to a publisher would not be subject to the tax in ordinary circumstances. The author is the real consumer of the paper constituting the manuscript, and the author would, therefore, pay a tax to his supplier based on the purchase price of the paper, ink, typewriter, etc. The publisher is interested in acquiring a service, i.e., the ideas of the author, not the paper itself. The publisher, then, would not pay a tax based on the price of the manuscript. A tax would, of course, apply to the sale of copies of the book published from the manuscript and transferred for a price by the publisher or another vendor. So, also, the tax would apply to a sale of the manuscript itself if the manuscript perhaps by reason of historic interest, was the item of tangible personal property of primary interest to the purchaser. Similar examples could be given regarding paintings, maps and subscription services for such information as petroleum well data, logs, etc., even if the medium publication were other than paper, as, for example magnetic tape.
12. When a transaction is regarded as a sale of tangible personal property, the tax applies to the purchase price transferred from the purchaser, or customer, to the retailer or seller without any deduction for the work, labor, skill, thought, or other element of expense incurred in producing the tangible personal property.
13. The above rules supersede any conflicting rules previously issued by the Manager concerning this same topic.

BY ORDER OF THE MANAGER OF FINANCE

CARY KENNEDY
Manager of Finance

Approved by the City Attorney this 12th day of December, 2014.

D. SCOTT MARTINEZ
City Attorney

By

CHARLES T. SOLOMON
Assistant City Attorney