

City and County of Denver, Colorado

TAX GUIDE

Topic No. 86

WHOLESALE SALES AND WHOLESALE DEALERS

Generally, the retail sale or purchase of taxable tangible personal property, products, and services, is subject to sales or use tax.

Wholesale sales, however, are not subject to sales or use tax. A wholesale sale is a sale by a wholesaler to a retailer, jobber, dealer, or other wholesaler for resale. A wholesale sale does not include a sale by a wholesaler to a user or consumer of the taxable tangible personal property, product, or service; such sales are retail sales.

WHOLESALE SALES INCLUDE:

The purchase of tangible personal property by a purchaser engaged in the business of manufacturing or compounding is a "wholesale purchase", and not subject to Denver's sales or use tax, if the final manufactured or compounded item is for resale and all of the following conditions are met:

- A. The tangible personal property is physically transformed during the manufacturing or compounding process;
- B. The tangible personal property becomes a necessary and recognizable ingredient, component and/or constituent part of the finished manufactured or compounded product; and
- C. The tangible personal property's physical presence in the finished product is essential to the use of the ultimate consumer.

Sales and purchases of tangible personal property for use as containers, labels, and shipping cases are exempt from sales and use tax when all of the following conditions are met:

- A. The tangible personal property is sold to and used by a manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor, or bottler to contain or label the finished product;
- B. The tangible personal property is transferred by such retailer along with and as a part of the finished product to the purchaser; and,
- C. The tangible personal property is not returnable to a retailer for reuse.

WHOLESALE SALES DO NOT INCLUDE:

1. A sale by a wholesaler to a user or consumer not for resale. This would include any merchandise sold to wholesalers for their own use. A purchaser who provides the vendor a copy of their sales tax license is not exempt on purchases not resold. Sales taxes must be paid on all purchases for business or personal use. Except for withdrawals from resale inventory, the buyer does not have the option of later paying consumer use tax on purchases for business or personal use.
2. The leasing, hiring, renting of, or granting of a license to use taxable tangible personal property or products to a user or consumer thereof (including royalty agreements).
3. Sales of returnable containers to manufacturers, compounders, wholesalers, retailers, jobbers, packagers, distributors, or bottlers.
4. A sale of taxable tangible personal property or products to a person for resale when there is a likelihood that the City will otherwise lose tax revenues due to the difficulty of collecting the applicable taxes.

BURDEN OF PROOF:

The retail sale of tangible personal property, products, or services not otherwise exempt is subject to sales or use tax. Exemptions in the Denver Revised Municipal Code (DRMC) are clearly defined and very specific. The list of exempt purchases cannot be increased by implication or similarity. In all cases, the burden of proof is upon the vendor to establish that a sale is exempt from tax.

When audited, the vendor is required to provide evidence to support the exempt status of a transaction. Please refer to **Tax Guide Topic 24 Exemption-Burden of Proof** for guidance on the type of records the Treasury Division recommends that a vendor maintain.

In order for a wholesale sale to be valid, the seller must exercise care and good faith to insure the product sold is of a type normally resold, leased, rented, or incorporated as an ingredient or component part of a product manufactured by the buyer and then resold in the usual course of business.

The following typically shows the exercise of care and good faith:

1. The purchaser must be able to resell the product being purchased. This could be evidenced by the vendor maintaining a file of copies of purchasers' applicable, valid sales tax licenses; and
2. The purchaser must be substantially engaged in reselling products like those being purchased. The seller, in order to make a wholesale sale, must know the nature of the purchaser's business, and that the purchase probably will be resold. In some situations, industry standards may be that a product is typically not resold, but in some situations could be resold. In these situations, in order to assist the seller in ascertaining the nature of the purchaser's business, the seller should require a Standard Municipal Home Rule Affidavit of Exempt Sale noting that the specific property is being purchased for resale in the normal course of business. However, if the seller cannot ascertain the nature of the purchaser's business, tax should be charged and the purchaser should request a refund directly from the City.

It is the vendor's responsibility to collect sales tax in any questionable situations. The purchaser can then apply to the City for a refund of any taxes paid in error.

EXAMPLES

1. AAA Distributors sells white T-shirts to Joe's T-Shirt Shop located in Denver. Joe's T-Shirt Shop then silk screens pictures on them and sells them to customers.

The transaction between AAA Distributors and Joe's T-Shirt Shop is a wholesale sale and is not taxable. The transaction of purchasing paint, which is used in the silkscreen process, is also a wholesale sale and is not taxable. The sale transactions between Joe's T-Shirt Shop and its customers are retail sales and Denver sales tax applies.

2. ABC Box Company sells specially designed clothing boxes to three Denver vendors: Major Department Store, XYZ Moving and Storage, and the Little Package Store. The boxes sold to Major Department Store are used to package the products they sell, are not returnable, and their costs are included in the selling price of items Major Department Store sells at retail. The boxes sold to XYZ Moving and Storage are used in performing the moving and storage services and are not separately invoiced to its customers. The boxes sold to the Little Package Store are resold to its customers. Both Major Department Store and the Little Package Store have Denver retail sales tax licenses.

ABC Box Company will not tax the sales to Major Department Store or the Little Package Store. These are wholesale sales because the Major Department Store uses the boxes to contain items it sold at retail and the cost is included in the selling price. The Little Package Store sells the boxes at retail and collects the sales tax from its customers. ABC Box Company would tax XYZ Moving and Storage since XYZ Moving and Storage does not have a retail sales tax license and does not subsequently make retail sales of the boxes.

3. Fast Freddie's Used Cars, which holds a resale license in Denver, goes to ABC Computer Sales and Service to purchase a desktop computer. Fast Freddie provides a copy of its resale license and states that it is "buying for resale".

Since Fast Freddie is in the used car business, ABC cannot in good faith make the determination that Fast Freddie will resell the computer. Therefore, Denver sales/use tax must be charged on the transaction. Fast Freddie may request a refund from the City if it believes the purchase is indeed for resale.

4. Sam's Supply sells parts, supplies, and tools to customers in the heating, ventilation, and air conditioning (HVAC) industry. Harry's Heating comes in and purchases a thermostatic control module, a bottle of leak detector fluid, and a wrench. As part of its credit approval process, Sam's Supply has a copy of Harry's Heating's current sales tax license on file, and Harry's Heating has been a regular customer for some time and is known to be in the business of repairing heating systems.

Harry's Heating can purchase the thermostatic control module as a wholesale purchase, since it will resell this item in the normal course of its business. However, Harry's Heating must pay sales tax on the bottle of leak detector (a supply used in the business) and the wrench (a tool used in the business). The supplies used in the business would be taxable even if Harry's Heating bills a generic line item of "supplies" on its invoices to its end customers.

5. With the same situation as Example 4, Harry's Heating states that its internal procedure is that all its repairmen must purchase the tools that they use on the job. Therefore, as a normal part of its business, Harry's Heating sells any tools issued to its repairmen, with or without a markup, and charges sales tax on these sales. Typically, a HVAC repair shop would purchase tools for its own use, and owe sales/use tax on these purchases. However, some HVAC shops account for tools by selling them to its repairmen. Therefore, the tools can be sold tax-free for resale to Harry's Heating, but Sam's Supply should require

Harry's Heating to complete and sign a Standard Municipal Home Rule Affidavit of Exempt Sale, stating it they specifically sell tools to its repairmen, and keep the form on file at least 4 years.

RELATED TAX GUIDE TOPICS

Exemption Burden of Proof
Refunds and Credits

REFERENCES

- * DRMC Section 53-53(a)(38) Definitions - Wholesale Sale – Sales
- * DRMC Section 53-53(a)(39) Definitions - Wholesaler – Sales
- * DRMC Section 53-57(a) Retailer responsible for payment of tax – Sales
- * DRMC Section 53-14 Refund Procedure
- * DRMC Section 53-103(a)(43) Definitions - Wholesale Sale – Use
- * DRMC Section 53-103(a)(44) Definitions - Wholesaler – Use
- * DRMC Section 53-107(a) Retailer responsible for payment of tax – Use

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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