
CONTRACTORS

CONSTRUCTION CONTRACTORS

The term “construction contractor” applies to general contractors and subcontractors and includes, but is not limited to:

- building contractors;
- foundation, curb, parking lot contractors;
- painting, stucco, brick and other finish contractors;
- roofing contractors;
- road, grading, and excavating contractors;
- electrical, plumbing, and heating/air conditioning contractors;
- cabinet, casework, sheet metal, and glazing;
- any person engaged in the construction, reconstruction or significant repair of any building, bridge or structure under a contract arrangement of any physical structure that is part of real estate.

The construction contractor is deemed to be the consumer of the construction materials used in the construction project and may not avoid the payment of the sales or use tax by use of provisions in the construction agreement.

Businesses providing “completed units” or “fixtures” of personal property to be affixed to, installed in or used in conjunction with a structure will not be regarded as performing work by a contractor if the personal property can be removed:

- Without substantial damage to the structure, and
- Without altering the functional use of the structure.

Completed Units include but are not limited to sales of:

- appliances - stoves, refrigerators, dishwashers, clothes washers and dryers,
- awnings and window blinds
- carpeting
- ready-made cabinets
- storm doors, storm windows, screens

Fixtures include but are not limited to:

- air conditioning and refrigeration units
- burglar and fire alarms systems
- counters, counter tops, and lockers (prefabricated)
- elevators, hoists and conveyers
- furnaces, boilers, and heating units
- plumbing and lighting fixtures
- signs
- telephone equipment
- vault doors and equipment

On such sales, the sales tax must be collected from the purchaser by the retailer. If the installation charges are separately stated on the sales invoice, these charges are not taxable. Repairs of these items are not considered repairs of real estate.

CONSTRUCTION MATERIALS

Construction materials shall mean tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a complete structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring, and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items, which, do not remain as an integral or inseparable part of a completed structure or project are not construction materials.

All construction materials purchased, used or consumed inside the City of Arvada by a construction contractor are subject to City sales or use tax unless the construction materials are purchased for:

- Time and Materials Contractor - holding a valid Colorado sales tax license, or
- A general contractor has been issued a valid Certificate of Exemption for an exempt project which is provided to the vendor by either a general or subcontractor, or
- A construction project where a valid building permit was issued indicating use tax has been paid or will be paid.

TIME AND MATERIAL CONTRACTORS

Arvada sales taxes are not charged to contractors working under a time and material contract if a valid sales tax license is presented to the vendor. A time and material contractor is considered the retailer of items purchased and such purchased items are sales for resale.

STATE EXEMPT PROJECTS

The State of Colorado provides an "89" exemption for construction materials used for work on property owned and used by tax-exempt organizations, religious, charitable, and governmental entities. The general contractor must obtain the exemption by applying to the State of Colorado prior to pulling an Arvada building permit. A separate certificate is required for each contract. Subcontractors will not be issued Certificate of Exemptions. It is the responsibility of the general contractor to issue certificates to each of the subcontractors. The exemption only applies to purchasing building / construction materials for the exempt project and does not include or apply to the purchase or rental of equipment, supplies, and materials that are used or consumed by the contractor and which do not become a part of the structure, highway, road, street or public works owned and used by the exempt organization.

The City of Arvada will accept a valid "89" Certificate of Exemption issued by the State of Colorado.

A contractor may not avoid the payment of City sales or use tax on materials purchased by using the name of a tax-exempt entity for which work is performed. The contractor is the consumer of the materials purchased and is subject to City tax unless a valid Certificate of Exemption has been issued for the specific building permit.

BUILDING PERMITS

The City of Arvada requires that use tax must be paid directly to the City on all construction materials used in projects requiring a City building permit. Payment of building use tax is customarily made by the general contractor and is only a “**Prepayment**” of tax on the project. The current sales/use tax rate is 3.46%. The building use tax estimate is computed and collected when the permit is issued and is based on the Job Valuation that is reflected on the Building Permit.

Estimated Pre-payment of Building Use Tax

A use tax estimate is computed and collected when the permit is issued and is based on the total value of construction. To calculate the use tax, first take the valuation of the project and multiply it by the appropriate *construction cost percentage* (listed below) to determine the estimated amount of materials that will be taxed for the project. This amount should then be multiplied by the 3.46%, the Arvada use tax rate.

Construction Cost Percentage

(50% estimated to be materials / 50% estimated to be labor – prior to 01/01/2017)

(56% estimated to be materials / 44% estimated to be labor – effective 01/01/2017)

(58% estimated to be materials / 42% estimated to be labor – effective 01/01/2018)

Actual Basis

An alternative would be to file on an actual basis by filing sales / use tax on a monthly basis. The contractor would need to have a business license and report either the sales tax collected from the customer and/or use tax due on construction materials used on the project. At the time the permit is being issued the Business License account number should be provided in order not to paid use tax on the permit.

To avoid potential double taxation, contractors should present the permit when purchasing construction materials in order to qualify for an exemption from City sales tax. If the materials supplier is located in the state of Colorado, the supplier shall charge State sales taxes, and if applicable RTD, Cultural, and County sales taxes. The general contractor should provide copies of the building permit to sub-contractors on the project so they may purchase construction materials without paying City tax as well.

It is suggested that the general contractor reconcile the actual use tax liability with the estimated pre-payment at the conclusion of the project. When reconciling the deposit, credit will not be given to contractors for sales taxes paid to other municipalities for construction materials used on construction projects in the City. The contractor will need to obtain a refund from the municipality where the tax was paid.

Burden of Proof – Building Permit

A valid building permit relieves a vendor from the burden of proving that the sale of building materials is for construction work only if the vendor accepts the permit in good faith from a purchaser who, at the time of the purchasing the building material, intends to use the materials in the project that the permit was issued for and that the building materials will become a part of project.

For the purchase of the construction materials not to be taxable a “valid building permit” must be provided prior to the construction materials being purchased. In addition, the “Job Value” on the permit should exceed the total purchase price of the construction materials being purchased under the permit. If there is any doubt to the validity of the permit, sales taxes should be collected / paid at the time of purchasing the constructions materials. A refund can be issued directly of from the City of Arvada if proof is provided that the materials are covered under the permits.

LUMP SUM CONTRACTORS

Lump-sum contractors are the end consumers of materials used in fulfilling all construction contracts. They must pay all applicable sales and use tax on all purchases of construction materials, building supplies, and all other tangible personal property. The only non-taxable purchases of construction materials a contractor may make are those for construction work for a project requiring a permit or a tax exempt project for an organization – see State Exempt Projects.

USE TAX

For projects that do not require a permit:

All construction materials purchased outside of City and brought into City are subject to use tax with two exceptions:

- For materials purchased outside of City to be used in City on which sales taxes was properly paid to another municipal. Use tax would only be due to the extent that the Arvada City tax exceeds the amount of sales tax paid to the other municipality (incremental tax difference would be due).
- For materials intended for use outside of City but which are brought into City for temporary storage only, no use tax would be due. “Use” or “consumption” will not include shop tasks performed on the materials such as assembly of parts or bending of sheet metal prior to the materials being installed out of the City.

Use tax also applies to the contractors’ use of supplies such as oxygen, acetylene, tools and parts for tools, which they use in their business.

ARVADA MUNICIPAL CODE – Chapter 98 - Taxation

Sec. 98-61. Definitions.

Construction materials shall mean tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a complete structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring, and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items, which, do not remain as an integral or inseparable part of a completed structure or project are not construction materials.

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, contractor also includes subcontractor.

Retailer-contractor means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Sec. 98-70. – Exempt sales.

There shall be exempt from taxation under the provisions of this article the items of sales and services including, but not limited to the following:

(9)j. All sales of construction materials (as defined in section 98-61) if such materials are picked up by the purchaser, and if the purchaser of such materials presents to the retailer a valid building permit evidencing that a local tax has been paid or will be paid. For construction materials used in the building, erection, alteration, or repair of structures, highways, roads, streets and other public works owned and used for an exempt organization, the general contractor constructing the project must obtain an exemption certificate from the state department of revenue for the project.

Sec. 98-84. Structures and contents, computation.

(a) Every contractor who shall build, construct, reconstruct, alter or remodel any building, dwelling or other structure, or improvement to real property in this city, and who shall purchase lumber, fixtures or any other construction materials and supplies used therefor, or any article of tangible personal property used therein, and every owner or lessee of realty situate in the city, and of the improvements and structures located upon realty situate in the city, upon which any article of tangible personal property acquired from sources within or without the city, are installed, attached or affixed, and which contractor, owner or lessee has not paid the tax imposed by this article thereon, to a vendor required or authorized to collect the same, shall pay the city sales and use tax, which shall be estimated by determining the building values for permit purposes as established in chapter 18, and multiplying that value by the RS means building construction cost data, city cost indexes for the Denver, Colorado area for that current year, which shall establish an estimated value upon which the city sales or use tax shall be computed and collected, either through the owner, lessee or general contractor, or separately, if he is a subcontractor electing to do so at the time a building permit is issued.

(b) The enforcement officer thereafter may conduct an audit to recompute the tax by comparing the estimated value of the construction materials and supplies used therefor and the articles of tangible personal property used therein to the actual cost of the same. If the recomputed tax is less than that shown and paid by the taxpayer, the difference shall be refunded to the taxpayer. If the recomputed tax is more than that shown and paid by the taxpayer, the taxpayer shall be notified of the deficiency and the amount thereof.
(Ord. No. 3783, § 2, 12-16-02).

Sec. 98-85. Deposit receipt.

Upon payment of the city sales or use tax as provided by section 98-84, the department of finance shall issue a sales or use tax deposit receipt identifying the address for which the purchase is being made and the city building permit number.
(Code 1981, § 31-60; Ord. No. 3783, § 2, 12-16-2002)

Sec. 98-87. - Burden of proof.

The burden of proving that any person is exempt from taxation under this article shall be upon the vendor unless the vendor accepts a resale certificate, exemption certificate or building permit from the purchaser, under the conditions in sections 98-88 through 98-90. It shall be the duty of every person engaging or continuing in business within the city or otherwise subject to the tax under the provisions of this article or a person requiring a license under section 98-63 or 98-80 hereof to keep and preserve suitable records of all sales and transactions as may be necessary from time-to-time to determine the applicability of the provisions of this article thereto, and to keep such invoices, sales memoranda, books and records for a period of three years; and they shall be open at any time for examination by the enforcement officer or his agents.
(Code 1981, § 31-62; Ord. No. 3783, § 2, 12-16-2002)

Sec. 98-90. Building permits; construction project.

(a) A valid building permit relieves a vendor from the burden of proving that the sale of building materials is for construction work only if the vendor accepts the permit in good faith from a purchaser who, at the time of the purchasing the building material, intends to use the materials in the project that the permit was issued for and that the building materials will become a part of the structure, highway, road, street or other public works.

(b) Requirements for proper documentation of the sale of construction material with a building permit:

- (1) Name of purchaser;
- (2) Address of purchaser;
- (3) Item purchased;
- (4) Permit number/municipal name.

(Code 1981, § 31-62.3; Ord. No. 3783, § 2, 12-16-2002)

Sec. 98-94 Statute of limitations.

Unless the limitation period has been extended as provided in this section, the statute of limitations for provisions contained in this chapter shall be as follows:

- (2) Assessments. No notice of assessment shall be issued more than three years after:
 - a. The due date of such total tax liability when returns have been filed; or
 - b. For a construction project which requires a city building permit, the date the final certificate of occupancy was issued for such project; or
 - c. For a construction project not requiring a city building permit, the date of completion of the project.

- (6) *Limitation. The period of limitation may be extended before its expiration.*
- a. *The taxpayer and the finance director may agree in writing to extend the period.*
 - b. *If the city provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this article, such period of limitation shall be extended for the audit period until 30 days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. The term "audit period" includes all reporting periods with due dates which fall within the 36 month period preceding the date of the notice of audit, or if a city building permit is required, the period between the issuance of such building permit and the issuance of a final certificate of occupancy.*
- (7) *Audit. Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this chapter.*
- (Code 1981, § 31-63.3; Ord. No. 3783, § 2, 12-16-2002)*

RELATED TOPICS

CONSTRUCTION USE TAX RECONCILIATION
MOBILE MACHINERY

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT ARVADA TAX LAW FOR THIS SUBJECT, INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE ARVADA MUNICIPAL CODE. HOWEVER, THE TAX GUIDE SHALL BE USED IN CONJUNCTION WITH THE ARVADA MUNICIPAL CODE (CHAPTER 98) IN DETERMINING TAX LIABILITY.