
EXEMPT PURCHASES CONVERTED TO TAXABLE USE

The *Arvada Municipal Code* imposes use tax on purchases of tangible personal property (not including inventory) that are used, stored, consumed or distributed within the City on which no sales tax was paid at time of purchase. If any item which was originally purchased for wholesale and is subsequently withdrawn from inventory for use by the buyer either personally or in the buyer's business, the cost of the item withdrawn is subject to use tax.

A buyer's obligation to remit use tax on goods removed from inventory does not relieve the seller's burden to show that sales were properly exempted. If the seller is audited, and exempted sales are disallowed, the seller will be required to show that the purchaser was properly licensed and the items purchased were resold. The seller, therefore, assumes some risk in exempting sales that the City later determines are not exempt, as the City will assess taxes, penalties and interest against the seller despite any indemnification by the buyer.

If any item which was originally purchased for wholesale and is subsequently deemed to be unusable or not of a quality that can be sold in the regular course of the business due to damage or imperfection, the unpaid disposition of such property does not constitute a taxable withdrawal from inventory. However, if the property that is unusable or not of a quality that can be sold in the regular course of business, it must collect sales tax from the purchaser on the sale price of unless the sale is otherwise exempt. If property is stolen then the involuntary withdrawal of the inventory does not constitute a taxable use.

EXAMPLE

Business Use - XYZ Office Furniture has an executive chair in inventory. The president of the firm needs a new chair for his office. Because XYZ is a dealer in office chairs, they purchase them for resale, and thus tax free. The taxable incident occurs when the chair is withdrawn from inventory for use by the business. Use tax then becomes due on the cost of the executive chair.

Donated Goods - The local discount grocery store donates food products to a charitable organization. The food would be subject to use tax at cost. The grocer is considered the user of the food, because the business is donating the food.

Employee Meals - The employees at Olde Town Café are allowed to eat at the café free of charge whenever they are working a shift. Those meals that are provided to the employee free of charge are subject to use tax on the cost of the meal. When meals are recorded as a sale, but then discounted at 100% (Employee Comp Meals) - no money received, then the costs of the meals are subject to use tax and should be reported by applying the cost of good sold percentage to the total of the Employee Comp Meals.

Research and Development or Quality Control Testing - ABC Manufacturing Company withdraws product from a self-produced inventory to conduct quality control testing and research and development. Any items purchased for resale and taken out of inventory is liable for use tax on the cost of the property withdrawn.

Samples (Purchased Inventory) - The greenhouse participates in a Home and Garden Show each year. The greenhouse purchases seed packets from a vendor and provide the seed packets as part of a free growing kit during the show. The kits and seed packets are subject to use tax at the time they are withdrawn from inventory.

Samples (Self-Produced Inventory) - A manufacturer of food products provide samples to customers in order to promote new products. The product samples are taken out of inventory and sent to customers at no cost. The acquisition cost of the food product used for samples is subject to use tax at the time the items are withdrawn from inventory.

Unusable Product Sold as a By-Product - A manufacturer that sells waste or by-products to a recycler the manufacturer must collect sales tax on the sales price of the waste or by-products unless the materials are sold to a reseller. If, however, the manufacturer simply disposes of such property without a sale, there is no taxable event.

ARVADA MUNICIPAL CODE – Chapter 98 – Taxation

Sec. 98-61. Definitions

Consumer means any person in the city who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the city.

Purchase or sale means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

(1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;

(2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;

(3) Performance of taxable services

(4) Barter or exchange for other tangible personal property, other taxable products, or services.

Storage means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the city from any person or vendor.

Use means the exercise, for any length of time by any person within the city of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the city from any person or vendor or used in the performance of a contract in the city whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

Wholesale sales means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this chapter.

Wholesaler means any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

Sec. 98-70. - Exempt sales.

g. *Tangible personal property purchased or leased from a resident vendor by a person engaged within the city in the business of manufacturing for wholesale sale or compounding for wholesale sale, when such tangible personal property is:*

1. *An article, substance or commodity which becomes an ingredient or component part of the product manufactured, which product is itself tangible personal property, and the container, label and shipping case thereof.*

Sec. 98-77. - Tax on use, storage, distribution, consumption; intent.

It is hereby declared to be the legislative intent of the city council that for the purposes of this article every person who stores, uses, distributes or consumes within the city any article of tangible personal property purchased at retail, and not stored or distributed in normal function of wholesaling, is exercising a taxable privilege. It is hereby declared that every resident of the city or any person doing business within the city who purchases or leases tangible personal property for use, storage or consumption within the city from sources outside the city and taxable hereunder, and who has not paid the tax imposed by this article, shall make a return and pay the tax to the finance director. The use, storage or consumption of tangible personal property includes for the purpose of this article, materials, commodities and items of tangible personal property affixed to or made a part of facilities and structures on real property owned or leased situated within the city.

RELATED TOPICS

COUPONS, DISCOUNTS AND PROMOTIONAL ITEMS
SAMPLES, DEMONSTRATIONS AND DISPLAYS

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.