
EXEMPTION - BURDEN OF PROOF

The retail sale or purchase of articles of tangible personal property not otherwise exempt is subject to sales or use tax. Exemptions in the *Arvada Municipal Code* are clearly defined and very specific. The list of exempt commodities cannot be increased by implication or similarity. In all cases, the burden of proof is upon the vendor to establish that a sale is tax exempt.

The vendor is required to provide evidence to support the exempt status of a transaction. Such evidence may include:

- A. A copy of the customer's current resale certificate or the vendor's own file of valid customer resale numbers (Colorado Tax Account Number), providing the purchaser is substantially engaged in reselling like products as those being purchased;
- B. A copy of the purchaser's or general contractor's building permit showing use tax was properly paid to another municipality;
- C. Delivery receipts, bills of lading, or other evidence the sale was made to a non-resident and delivery was made by the vendor, common carrier, or by mail to a location out of Arvada;
- D. A certificate of exemption issued by the Colorado Department of Revenue indicating that the contractor's or subcontractor's purchases of construction building materials used in the building, erection, alteration, or repair of structures, highways, roads, streets, of other public works owned and used by the United States government, the State of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only; by charitable organizations in the conduct of their regular charitable functions and activities; or Schools, other than schools held or conducted for private or corporate profit.

The above represent some of the types of evidence that may be accepted as indicators of an exempt transaction. However, the exempt status of each transaction must be determined on its own merits with the ultimate responsibility for the burden of proving the exemption upon the vendor. Therefore, the vendor should know the nature of his/her customer's business before allowing any form of exemption.

EXAMPLES

1. John Doe Construction has pulled a building permit to perform some work in the City of Westminster. The permit shows proper use tax was paid to Westminster on the materials portion of the contract. John Doe is purchasing his material from an Arvada vendor. This transaction and any subsequent purchases, for this job only, are not subject to Arvada tax, provided the vendor maintains a copy of the permit indicating use tax was paid to another municipality.

2. ABC Distributors is currently being audited. ABC has deductions from gross sales for resale, and sales to charitable organizations. Evidence must be provided supporting the validity of these deductions. "Resale" sales should be documented by providing valid sales tax account numbers and the customer must be reselling the products purchased. Sales to exempt/charitable groups should be supported with a letter of exemption or exempt number. The purchase must be used in the regular charitable activities of the exempt entity and payment for the items or service must be made with funds of the organization.

ARVADA MUNICIPAL CODE – Chapter 98 - Taxation

Sec. 98-61. Definitions.

Charitable organization means any entity which:

- (1) *Has been certified as a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code; and*
- (2) *Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental or spiritual needs of persons or animals, and which thereby lessens the burdens of government.*

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. 98-88. Resale certificate.

(a) *A resale certificate relieves a vendor from the burden of proving that a sale of tangible personal property or taxable service is not a retail sale only if the vendor accepts the resale certificate in good faith from a purchaser who is engaged in the business of selling tangible personal or taxable services, and who, at the time of purchase, intends to sell the tangible personal property or taxable service in a retail sale in the regular course of business. The purchaser does not have the option of paying consumer use tax later on purchases for business and personal use items. The vendor is responsible for the collection of sales tax in questionable situations. If there is a dispute between the purchaser and the vendor as to whether a transaction is exempt from taxation, the vendor must collect sales tax and the purchaser must pay it. The purchaser may then apply to the city for a refund of the taxes in dispute under section 98-74.*

(b) *Requirements for proper documentation for resale sales:*

- (1) *Name of business;*
- (2) *Address of business;*
- (3) *Item or service purchased;*
- (4) *Colorado resale number or license number from purchaser's home state.*

(Code 1981, § 31-62.1; Ord. No. 3783, § 2, 12-16-2002)

Sec. 98-89. Exemption certificate.

(a) *An exemption certificate relieves a vendor from the burden of proof that a sale of tangible personal property or taxable service is for exempt use only if the vendor accepts the certificate in good faith from a purchaser who, at the time of purchasing the tangible personal property, intends to use the property in a manner that qualifies for an exemption under section 98-70(1) and (2).*

(b) *Requirements for proper documentation for exempt sales:*

- (1) *Name of organization;*
- (2) *Address of organization;*
- (3) *Item or service purchased;*
- (4) *Organization's state exemption number, copy of exemption certificate or signed affidavit of out of state tax-exempt organization.*

(c) *Not all purchases made by tax-exempt organizations are nontaxable. The vendor may sell tangible personal property or taxable services tax free only if both of the following requirements are met:*

- (1) *Payment for the item or service must be made with funds of the organization;*
- (2) *The item or service is used by the organization in conducting its regular religious, charitable or governmental business.*

(d) *Building materials for construction work on property owned by tax-exempt organization - religious, charitable and governmental may be purchased tax free. The general contractor must obtain an exemption certificate from the state department of revenue for the project.*

(Code 1981, § 31-62.2; 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)

RELATED TOPICS

GOVERNMENT AND CHARITABLE ORGANIZATIONS

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.