

## FRANCHISE OPERATIONS

The *Arvada Municipal Code* imposes a sales tax upon the purchase price paid for tangible personal property sold at retail in the City. To the extent a sufficient, legally-imposed sales/use tax was not paid to the City or another municipality at the time of purchase, Arvada use tax is due.

### FRANCHISE AGREEMENT

A franchise agreement is a business relationship which grants a right or license to a franchisee to operate, using the name, process, territory, patent, copyright, trademark, or other property, tangible or intangible, of a franchisor. In exchange, the franchisor charges a fee (royalties or service fees) to the franchisee for the right to use the property. The franchisor may also impose various requirements or standards over the operation of the franchisee including distribution, sales, purchases, product presentation, quality, cleanliness or other controls as the franchise agreement specifies.

Sales or use tax applies to the sale or license to use taxable tangible personal property supplied under a franchise agreement.

When both intangible rights and tangible personal property are furnished under a franchise agreement, and the charges are not separately stated, Arvada tax will apply to the entire franchise payment. If the charges are separated or can be determined from the franchise agreement, only the items otherwise taxable under the *Arvada Municipal Code* are subject to sales or use tax.

### TAXABLE PRODUCTS

Taxable items include, but not limited to the following:

Computers  
Equipment  
Furniture  
Instructional Materials  
Menus  
Operational Manuals  
Point of Sales System  
Promotional Materials  
Software  
Tableware

The following items are exempt from sales and use tax when sold by the franchisor to the franchisee:

- Advertising which is prepared and placed in the media (TV, Radio, Social Media)
- Items which are sold in the regular course of the franchisee's business
- Royalty fees if no taxable service or property is included

## EXAMPLES

1. A retail location is owned by the franchisor and leased to the franchisee. The franchisee has a monthly lease for the rental of the building, equipment, customer seating, and pays a fee for promotional signs and logo items. The amount of the lease payment attributable to the tangible personal property (equipment and customer seating) and the promotional items under the agreement are subject to Arvada sales / use tax.
2. A franchisee has an option to own the retail location and operate under franchisee's name. As part of this agreement, the franchisee must buy all restaurant equipment and all logo supplies from the franchisor. The purchase of all equipment and supplies that are not purchased for resale are subject to Arvada sales / use Tax.
3. As part of the franchise agreement, the franchisee must participate in national promotions such as a buy one get one free offer. The franchisor will reimburse the franchisee \$ .50 for each unit sold. Since the franchisee is reimbursed, the reimbursement becomes part of the selling price and is subject to city tax. The franchisee must charge sales tax to the customers on the selling price of the item sold and on the \$.50 reimbursement received from the franchisor. If the franchisee does not charge sales tax to the customers, the franchisee is required to pay use tax.

### **ARVADA MUNICIPAL CODE – Chapter 98 – Taxation**

#### **Sec. 98-61. - Definitions.**

**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;

**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.

**Tangible personal property** means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

**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.

**Use tax** means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the city.

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.