



PHOTOGRAPHERS AND PHOTOFINISHERS

The *Arvada Municipal Code* imposes its sales/use tax upon the purchase price paid for tangible personal property and certain taxable services purchased at retail in the City. Retail sales are sourced to the location where the purchaser takes possession of the purchased property (“destination sourcing”).

PHOTOFINISHERS

Photofinishers are engaged in the business of selling tangible personal property to their customers and their sales are taxable. The purchase of materials that become ingredients or component parts of the finished picture, such as mounts, frames, and sensitized paper, may be purchased by the photofinisher tax exempt because these items are purchased for resale. Any other purchases made, that do not become a part of the product sold to the customer, are taxable to the photofinisher at the time of purchase, or if no tax was paid, subject to Arvada use tax.

PROFESSIONS THAT USE X-RAY FILM

Physicians, surgeons, dentists, hospitals, laboratories and other professions that purchase X-ray film and then expose it for the purpose of diagnosis or examination are the users and consumers of the film and all related supplies used to expose and develop the finished product. These items are subject to sales tax at the time of purchase or use tax due to the City of Arvada.

FORMAT CONVERSIONS

The conversion from one medium to another medium, such as VHS tapes to DVD, is subject to City sales tax. The purchase price should include any costs for labor, profit, and materials. The true object to the customer is the DVD which is tangible personal property.

PHOTOGRAPHERS

Certain photography professions are in the business of selling tangible personal property to their customers while others provide services only. In determining whether a transaction involves the sale of tangible personal property or the performance of a service, the City will examine the transaction from the purchaser’s perspective. If in the eyes of the purchaser the object of the transaction is the acquisition of tangible personal property, then the transaction, or its use after the sale, is taxable. If the essence of the transaction is, from the purchaser’s perspective, the acquisition of a service, then the purchase or subsequent use is not taxable, even though some tangible personal property is incidentally transferred with the performance of the service. The City will also consider the value or charge for the service versus the value or charge for the tangible personal property transferred.

PHOTOGRAPHERS - PROVIDE TANGIBLE MEDIUM

When a professional photographer is hired to photograph or record to DVD a special event, the photographer and **will provide** a customer with the photographs, DVD’s or other tangible medium, which includes electronic photo files is required to charge sales tax on the entire amount (including consultation, sitting fees, and/or other production charges) since the true object sought by the customer is the photographs or DVD. The photographer may purchase the film, videotapes, DVD’s, or other supplies which directly become a part of the item sold tax exempt for resale. Sales tax must still be paid on camera equipment, lenses and other goods not purchased for resale.

When a transaction is regarded as a sale of tangible personal property, City sales tax applies to the full amount of furnishing the item without any deduction for labor, skill, thought, time spent or other expense of producing the property, even if separately charged to the customer.

PHOTOGRAPHERS AS A SERVICE

Photographers that do **not directly provide** a customer with the photographs, DVD's or other tangible medium, which includes electronic photo files, are the users of their equipment, film and other materials, and are subject to sales tax at the time of purchase or use tax if no sales tax was paid. These photographers may charge their customer a fee for the service or labor, but then electronically send the end product (photographs) to a third-party or website whereby the customer may purchase the photographs in any size and quantity desired. The third-party is responsible to collect and remit the appropriate sales tax for such purchases.

PHOTOGRAPHERS – TAXABLE PURCHASES

Photographers are the consumers of equipment and supplies used in conducting their business, and must pay sales tax when purchasing these items. The photographer must pay use tax on the item if sales tax was not paid at the time of purchase. An example of when this can happen is when the photographer purchases equipment from an out of state vendor that does not collect sales tax.

Examples of equipment and supplies upon which the photographer must pay sales tax include:

Cameras
Lenses
Computers
Printers
Computer software (including remote access software)
Props used for staging
Office supplies

EXAMPLES

1. Photographer charges \$3,500 for a contract to provide a photographic session. This amount is billed either as a lump sum or broken down on the invoice showing \$3,000 due for consulting, sitting or other fees and \$500 for a disc or access to digital photos. Regardless of whether the pictures are purchased on a disk or accessed digitally, the full amount of \$3,500 is subject to sales or use tax.
2. ABC Photography charges Customer a session fee. In return for the session fee Customer receives ABC Photography's services to include taking the photos, editing the photos, and posting of the photos in digital format on ABC's website. Customer is then provided a password allowing them access to the photographs on the website, where Customer may download the photographs (or not) at their convenience. There is no additional charge to Customer for downloading the photographs. ABC Photography's fees are subject to sales tax.
3. ABC Photography takes school portraits for Customer and charges a sitting fee for this service. Prints will be sold to Customer as a separate charge. ABC correctly charges sales tax to customer on these sitting fees, which are services rendered in respect to imprinting tangible personal property (the prints).

4. An Arvada couple hires a local photographer to take pictures at their daughter's sixteenth birthday party. The birthday party is held at a restaurant in Denver. After the party, the photographer sends a CD with the finished images to the couple by mail, at their Arvada address where the point of taxable occurs.

ARVADA MUNICIPAL CODE – Chapter 98 – Taxation

Sec. 98-61. - Definitions.

Price or **purchase price** means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
- (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

"Price" or "purchase price" includes:

- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Sec. 98-70. – Exempt sales.

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

- (9) s. Nontaxable service sales. The amount equal to the consideration received for installation labor or services sold with tangible personal property, if such services are separately stated on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor is never exempt.

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 TAX CODE. HOWEVER, THE TAX GUIDE SHALL BE USED IN CONJUNCTION WITH THE ARVADA TAX CODE (CHAPTER 98) IN DETERMINING TAX LIABILITY.