
PREVIOUSLY TAXED PROPERTY

The *Arvada Municipal Code* imposes use tax on the storage, use, distribution or consumption of tangible personal property purchased at retail or the furnishing of taxable services, if the transaction was previously subjected to a lawfully imposed sales or use tax on the purchaser or user by another municipal jurisdiction equal to or in excess of Arvada's use tax rate. A credit will be granted against the sales tax imposed by the subsequent jurisdiction with respect to such transaction equal in amount to the lawfully imposed municipal sales or use tax previously paid; however the amount of credit shall not exceed the sales tax imposed and paid. If a lesser tax was imposed and paid, then a credit is given for any *lawfully* imposed municipal tax paid and the incremental difference is still owed to Arvada.

When a municipal sales tax is collected in error or when an unlicensed vendor collects Arvada sales tax and fails to remit the sales tax, the credit will be denied if the City of Arvada is unable to recover the tax from the vendor or municipality.

EXAMPLE

ABC Title Company has a branch office located here in Arvada. The main office is located in Lakewood. All of the office supplies that are used in the Arvada branch office are ordered by and delivered to the main office in Lakewood. Only 3% local sales tax has been paid on the office supplies that are used at the Arvada branch office; therefore, use tax is due to Arvada on the supplies for the incremental difference of .46% (3.46% Arvada Sales Tax less 3.00% Lakewood Sales Tax).

John's Appliance Service, which is located in Denver, has been hired by the Panda Panda restaurant to service their walk-in cooler and freezer at the restaurant location. John charges Panda Panda time and materials along with 7.62% sales tax, which includes 3.62% Denver sales tax. The sales tax that has been charged by John's Appliance Service was an unlawfully imposed tax, because the services were performed at the Arvada location. If the Denver tax on the material portion of the service charged is not recovered from either John's Appliance Service or the City and County of Denver, then credit will be denied and Panda Panda will owe use tax at the Arvada rate.

When it has been determined that sales/use tax owed to Arvada has been erroneously paid by a taxpayer or vendor to another municipality, the City shall promptly notify that taxpayer and request permission to contact their vendor. In order to recover such taxes improperly remitted to another municipality, Arvada may either: 1) institute procedures for collections of the tax, penalty and interest from the taxpayer or vendor, or 2) make a written claim for recovery directly to the municipality that received the tax, penalty or interest owed to Arvada.

ORIGIN SOURCING STATES

The following 12 states are **Origin Based Sourcing** states where sales tax is collected at the “Point of Origination” and not the “Point of Delivery” which would be destination based sourcing:

Arizona	Ohio
California	Pennsylvania
Illinois	Tennessee
Mississippi	Texas
Missouri	Utah
New Mexico – Gross Receipts Tax <i>(destination sourcing effective 7/01/2021)</i>	Virginia

As a general rule, in an origin-based rate sourcing state, the appropriate sales tax rate charges for sales may be affected by one or more of the follow:

- Whether the seller has one or more locations in the state.
- If the seller takes orders in the state;
- Whether the seller “sells over the counter” from a location in the state;
- Whether the seller passes title to the items sold in the state; and / or
- If the seller has outside sales people “working out of” a location in the state.

EXAMPLE

Bob’s Accounting & Tax Service ordered and has delivered a new computer system at their Arvada business location. The computer system was ordered from XYZ Computers, which was located in Dallas, Texas. XYZ Computers charged Bob 8.25% Texas sales tax on the new \$10,000 computer system. Texas is an origin based state and when the seller takes order in Texas then the 8.25% is a lawfully imposed tax. Bob’s Accounting & Tax Service would owe no additional tax as the credit that would be granted exceeds the total current combined use tax rate of 7.46% (2.9% Colorado, 1.1% RTD/CD and 3.46% Arvada, effective 01/01/06).

TAX PAID OUT OF STATE

When the sales transaction takes place out of state and a lawfully imposed sales or use tax has been paid on the purchase, the taxpayer shall be entitled to the full credit for the combined amount of sales or use tax paid up to the combined Arvada use tax rate - see the Commerce Clause of the U.S. Constitution – dormant Commerce Clause. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision. – see Multistate Tax Compact. C.R.S. 1973, 24-60-1301.

EXAMPLE

The corporate office of Big Box Department Store, which is located in Ohio, purchases fixtures and supplies in bulk to be distributed to their 500 locations throughout the United States. The items are delivered to a warehouse in Ohio where Ohio sales / use tax is paid at a rate of 6.50%. Since this is a lawfully imposed tax, credit is given for the full tax paid by the taxpayer. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit is then applied against the amount of any use tax due a subdivision.

For any fixtures and/or supplies that are shipped from the Ohio corporate location to the Arvada – Big Box Department Store, tax will need to pay equal to the total current combined use tax rate of 7.46% (2.9% Colorado, 1.1% RTD/CD and 3.46% Arvada, effective 01/01/06). Jefferson County and Adams County do not impose a use tax. The combined use tax rate less the Ohio tax credit would leave the remaining amount of use tax due to Arvada at .96% = 7.46% - 6.5%. The Big Box Department Store will pay no more tax than it would have paid in Arvada using combined the use tax rate.

EXEMPTION

When tangible person property has been acquired and used for its intended purpose prior to becoming a resident of Arvada, then the property would be exempt from use tax.

ARVADA MUNICIPAL CODE – Chapter 98 – Taxation

Sec. 98-70. Exempt sales.

- (3) *All sales, which the city is prohibited from taxing under the constitution of the United States or the state.*

Sec. 98-78. Exemptions.

- (4) *Tangible personal property of a resident, which was acquired prior to his becoming a resident.*
- (9) *The storage, use, distribution or consumption of any article of tangible personal property purchased at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user. A credit shall be granted against the city's use tax with respect to such transactions equal in amount to the lawfully imposed municipal corporation sales or use taxes previously paid by the purchaser or user. The amount of the credit shall not exceed 3.46 percent. If the rate of sales or use tax to such municipal corporation is less than the rate imposed by this article, the net difference shall be paid to the finance director. This credit shall not apply if the tax paid was not legally due under the laws of such municipal or the laws of the municipal corporation are not compatible with those of the city as to specific taxation and exemption as applied to the transaction in question. Nor does the credit extend to construction materials used in a project for which a city building permit is required.*

TITLE 29, ARTICLE 2 – COLORADO REVISED STATUTES
COUNTY AND MUNICIPAL SALES OR USE TAX
29-2-105. Contents of sales tax ordinances and proposals.

(4) No sales tax of any statutory or home rule city and county, city, or town shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by the subsequent statutory or home rule city and county, city, or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city, or town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city, or town.

COLORADO REVISED STATUTES

Regulation 39-26-713.2(f). (Previously taxed property)

Use tax shall not apply to the storage, use, or consumption of tangible personal property, the sale or use of which has been subjected to a tax by another state and the tax paid in an amount equal to or in excess of the sales tax imposed by this article.

The storage, use, or consumption of tangible personal property, the sale or use of which has been subjected to a lesser tax than the tax imposed by this article, is not exempt; however, a credit for any similar tax paid to another state will be allowed against any tax accruing under this article, in respect to a given item of tangible personal property.

This exemption or credit will be denied if a tax paid to another state was not legally due under the laws of the other state.

Multistate Tax Compact. C.R.S. 1973, 24-60-1301, (Article V (1) of the Multistate Tax Compact) provides sales or use tax credit as follows:

"Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision."

Commerce Clause of the U.S. Constitution (Article 1, Section 8, Clause 3) – This clause dictates that Congress shall have power to regulate commerce among the several states which prohibits taxes that impose an undue burden on interstate commerce. The U.S. Court established a four-part test in the Case of Complete Auto vs. Brady (430 U.S. 274 (1977)) to determine state violations of the dormant Commerce Clause if the tax (1) applies to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against in-state commerce; and (4) is fairly related to the services provided by the state.

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.