



Revenue Office
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SALE AND PURCHASE OF A BUSINESS

The *Arvada Municipal Code* imposes a use tax upon the purchase price paid for tangible personal property, except inventory held for resale, acquired with the purchase of a business. This includes property taken in exchange for assumption or forbearance of outstanding indebtedness. Arvada use tax is due even if the seller or transferor has previously paid Arvada sales/use tax on the property sold because use tax is transactional (imposed each time a taxable event occurs).

The taxable basis is the price of such property as recorded in the bill of sale or agreement, provided that such price is greater than or equal to the fair market value of the property at the time of the sale. If the purchase is a lump-sum transaction, and the price of the property is not separately stated in the bill of sale or agreement, the greater of the fair market value of the property or the book value established by the purchaser for income tax depreciation purposes shall be the taxable basis.

When a business is taken over by other than the most recent seller in return for assumption or forbearance of outstanding indebtedness, the tax shall be paid on the fair market value of all taxable tangible personal property.

In determining the fair market value, the City uses the best information available including personal property declarations filed with the County Assessor, will prepare an estimate using an adjusted retail value, or may require an independent appraisal of the property.

Use tax must be reported on an *Initial Use Tax Return*, which may be obtained from the Revenue Office. The return must be filed and paid by the 20th day of the month following the sales/purchase date in order to avoid penalty and interest. Every person who purchases or establishes a business inside the City must file an *Initial Use Tax Return* even if no use tax is due.

Any retailer or vendor who shall sell out his business or stock of goods or shall quit his business shall be required to notify the tax and licensing division in writing of his intent to quit business and to file a report or return and remit all taxes due and owing to the city, including those incurred on the sale of the business within **ten (10) days** after the date of the sale of the business or stock of goods or quitting of the business.

Purchasers are cautioned that liens for the seller's outstanding taxes may have attached to the property offered for sale. City tax liens attach automatically by operations of law, and do not require a notice to be recorded for perfection. Purchasers are encouraged to require the seller to furnish a *Certificate of Taxes Due* detailing the outstanding liability, if any.

EXAMPLES

1. ABC Company purchases the assets of XYZ Company for \$150,000. The sale and purchase agreement shows the following allocations: Resale inventory \$50,000; goodwill \$10,000; accounts receivable \$35,000; furniture and fixtures \$15,000; machinery and equipment \$40,000. The taxable base is \$55,000 and includes the furniture, fixtures, machinery, and equipment.
2. DEF Company purchases the assets of UVW Company for \$150,000 and no allocation is shown in the sale and purchase agreement. An appraisal determines the value of the furniture and fixtures is \$25,000 and the machinery and equipment is \$50,000. These amounts are entered in the fixed asset ledger. The taxable base is \$75,000.
3. The Third National Bank forecloses on the XYZ Corporation. The business is closed until the bank can find a buyer. No tax is due on the bank's acquisition of the business assets through foreclosure as long as they are held for resale and the bank does not put the assets to taxable use.
4. In the example above, if the bank operates the business while seeking a buyer, then the bank's acquisition of the business assets through foreclosure for use in the business operations may be subject to tax. The taxable base would be the amount of the debt, appraised value of the personal property or the amount recorded on the books of the bank, if the recorded amounts reasonably reflect fair market value.
5. XYZ Company purchases 100% of ABC Company for the amount of \$1,000,000.00. The purchase agreement reflects that XYZ Company is purchasing common stock and not tangible personal property. A stock purchase is not subject to sales tax.
6. The Breezy Apartment complex was recently sold to a new owner. The complex consisted of 70 apartments and sold for \$800,000.00. The purchase agreement did not allocate any amount for tangible personal property that were included in the sale/purchase agreement, however, the appliances (*refrigerators, range and range hoods, microwaves, dishwashers, garbage disposal, and air conditioners*) and *window coverings* that are located in each apartment unit are all subject to use tax at their fair market value. In addition, the *washers and dryers* located in the on-site laundry facility, the clubhouse *furniture and game room equipment*, as well as *office equipment and furniture* are also subject to use tax.

ARVADA MUNICIPAL CODE – Chapter 98 – Taxation

Sec. 98-61. Definitions.

Business means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

Purchase or sale means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services.

Price or purchase price means the price to the consumer, 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.

Sec. 98-95. Inception of business; initial use tax or sale of business.

Any person who purchases or establishes a business inside the city shall file an initial use tax return.

- (1) Existing businesses. Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great or greater than the fair market value of such property. Where the transfer of ownership is a lump sum transaction, the use tax shall be due on the book value established by the purchaser for income tax depreciation purposes, or fair market value if no determination has been made. When a business is taken over by other than the most recent seller in return for the assumption of outstanding indebtedness, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. Such tax shall be reported on an initial use tax return. The due date of this initial use tax return shall be the 20th day of the month following the opening of the business.
- (2) New businesses. Use tax shall be due on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased for use inside the city. Such tax shall be reported on an initial use tax return. The due date of this initial use tax return shall be the 20th day of the month following the purchase of the business.
- (3) Notifying tax and licensing division. Any retailer or vendor who shall sell out his business or stock of goods or shall quit his business shall be required to notify the tax and licensing division in writing of his intent to quit business and to file a report or return and remit all taxes due and owing to the city, including those incurred on the sale of the business within **ten days** after the date of the sale of the business or stock of goods or quitting of the business. The purchaser of the business is liable for any unpaid tax due on sales made by predecessor, including tax on outstanding accounts on which sales tax has not been remitted. The purchaser is required to withhold a sufficient amount of the purchase money to cover any taxes due and unpaid until such time the previous owner can provide proof all such taxes have been paid. Action by the city against the former owner shall not prohibit the exercise by the city of the tax lien provisions stated in this article.

(Code 1981, § 31-64; Ord. No. 3783, § 2, 12-16-2002)

Sec. 98-96. - Unpaid tax a prior lien; generally.

The tax imposed by this article, together with the interest and penalties herein provided and the cost of collection which may be incurred by the city, shall be, and until paid, remain a first and prior lien upon the goods, stock in trade and business fixtures, including real or tangible personal property, of or used by any retailer under lease, title-retaining contract or other contract arrangement, and shall take precedence on all such property over other claims and mortgages. In the event the unpaid tax is not paid, collection of the unpaid tax may, in addition to the provisions of this chapter, be collected pursuant to the provisions of chapter 59 entitled "municipal liens." Any new owner or successor of a business or stock in trade shall be required to withhold sufficient of the purchase money, if any, to cover the amount of tax due until such time as the former owner shall produce a receipt from the finance director showing the tax paid in full or a certificate showing no tax is due. Anyone who takes title or possession of a business, fixtures or stocks by purchase, foreclosure or otherwise, takes same subject to the lien for delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and collection costs, but not to exceed the value of the property so taken or acquired.

- (a) At any time when taxes due are unpaid, whether or not notice of the city's lien is filed, the finance director may issue a warrant directed to any agent of the finance department, commanding such agent to distrain, seize, and sell sufficient of the real and personal property of or used by the taxpayer for the payment of all taxes due and owing to the city, together with any interest, and penalties accrued thereon and any other costs incurred in the collection thereof.

(Code 1981, § 31-65; Ord. No. 3783, § 2, 12-16-2002; [Ord. No. 4042, § 7, 12-11-2006](#); [Ord. No. 4548, § 2, 5-2-2016](#))

CODE of COLORADO REGULATION

COLORADO DEPARTMENT OF REVENUE – TAXATION DIVISION

SALES AND USE TAX - REGULATIONS

1 CCR 201-4

Regulation (39-)26-117.1. (Sale of a business) Where any vendor sells his business he shall make a return and pay all taxes due within ten days of such sale. The purchaser of the business is liable for any unpaid tax due on sales made by his predecessor, including tax on outstanding accounts on which sales tax has not been remitted. The purchaser is required to withhold a sufficient amount of the purchase money to cover any taxes due and unpaid until the vendor can provide proof any such taxes have been paid.

Sales tax shall be remitted by the purchaser on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a "package deal" in a lump sum transaction the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, the fair market value.

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.