
SAMPLES, DEMONSTRATIONS AND DISPLAYS

The *Arvada Municipal Code* imposes a use tax upon the privilege of using, storing, distributing, or otherwise consuming tangible personal property and certain taxable services in the City.

Taxability of Samples, Demonstration Units and Displays

Tangible personal property used by a retailer, manufacturer, wholesaler, or salesperson to sample, demonstrate, or display goods available for sale is subject to Arvada sales tax unless the goods will be resold in an unaltered state and basically unused by purchaser. If Arvada sales tax is not paid to a vendor licensed and authorized to collect the same at the time of purchase, then a use tax must be remitted directly to the City.

The basis of the use tax is the purchase price paid for the sample, display or demonstrator units. No reduction in the tax is permitted on account of the length of time the sample units are used, the amount of consumption, or tax collected on future sales of the units. The Arvada use tax is calculated on the full purchase prices paid. If the sample units are fabricated by the user, the basis of the tax is the cost of raw materials.

The intent of the purchaser to subsequently resell sample units does not necessarily qualify the units for exemption even if the units are carried as "inventory" on the purchaser's books. Rather, the purchaser must show clearly that the primary purpose of the purchase is resale in an unaltered condition and basically unused by the purchaser. In general, taxation is the rule and exemption the rare exception. If the sample units are subsequently resold, sales tax must be collected on the sales price at that time.

EXAMPLES

1. Company A is an Arvada electronics retailer. To induce customers to purchase goods, Company A uses some of its inventory as demonstrator units on its sales floor. These demonstrator units are connected to a power source and are operated during store hours. Company A does not adjust its inventory values on its books, as these units will ultimately be resold. Because Company A is using these units, they must pay use tax on the price they paid when they purchased the inventory at wholesale. Company A must also collect sales tax on the price charged when the demonstrator units are subsequently resold.

2. Company B is a furniture retailer with a showroom in Arvada. Company B uses furniture, rugs, and decorative accessories and fabric swatches in its showroom. Customers who like the furniture select the desired fabric pattern and place an order. Some orders are filled immediately with stock in Company B's attached warehouse and others are fabricated and delivered to the customer at a later date. Some of the floor samples are eventually touched up and sold at full retail price. The rest are discarded. The decorative accessories are either re-used or discarded. Company B must pay a use tax on all of the floor samples and decorative accessories. Company B must also collect sales tax on the price charged for the floor samples that are subsequently resold.

3. Company C is a grocer. On the weekends, Company C offers its customers samples of food taken from inventory and prepared. Company C must pay use tax on its cost of the inventory, including any napkins, toothpicks, disposable cups, etc., which it uses to distribute the samples.

4. Company D is a shoe retailer. Customers at Company D's store try on shoes for fit and appearance. Customers may briefly walk in the shoes within the store, but they must use socks and cannot remove them from the store to prevent wear. If the customer is satisfied with the sampled pair of shoes, they purchase that pair. Because the shoes are sold in an unaltered condition and basically unused, Company D does not owe a use tax. Company D must collect a sales tax on the price charged for the shoes.

5. Company E is a second hand store. It acquires used goods for sale from its retail storefront in Arvada. Company E places its inventory on its sales floor for sale in an "as is-where is" condition. Although Company E is displaying its goods, the goods are sold in an unaltered condition subsequent to Company E's acquisition. The fact that the goods are used when Company E acquires them does not subject Company E to a tax on such acquisition. When Company E subsequently sells the goods at retail, it must collect a sales tax on the price charged even though tax may have been collected on a previous transaction involving the goods when they were purchased new.

6. Company F is a candy manufacturer and retail store. Customers can take a tour of the candy being manufactured and afterwards stop in the retail store to sample and purchase the candy. The candy that is taken out of inventory and use for customer sampling is subject to use tax, as all of the ingredient use to make the candy were purchased for resale.

7. Company G is a liquor store operating in the City. On the weekends, the retailer offers a "tasting" of wines it carries in the store and provides cheese and crackers to prospective customers. The wine is taken from inventory and the cheese and crackers are purchased from a local grocer. The retailer must pay use tax to the City on the cost of the wine used or discarded during the tasting. If sales tax was not paid by the retailer when purchasing the cheese and crackers, then use tax would be due on those items as well.

ARVADA MUNICIPAL CODE – Chapter 98 – Taxation

Sec. 98-61. Definitions

Consumer means any person in the city who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the city.

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;

(3) Performance of taxable services

(4) Barter or exchange for other tangible personal property, other taxable products, or services.

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.

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.

Sec. 98-70. - Exempt sales.

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

r. Tangible personal property sold for rental or leasing inventory provided that such property is not otherwise used for customer demonstration or display.

Sec. 98-77. - Tax on use, storage, distribution, consumption; intent.

It is hereby declared to be the legislative intent of the city council that for the purposes of this article every person who stores, uses, distributes or consumes within the city any article of tangible personal property purchased at retail, and not stored or distributed in normal function of wholesaling, is exercising a taxable privilege. It is hereby declared that every resident of the city or any person doing business within the city who purchases or leases tangible personal property for use, storage or consumption within the city from sources outside the city and taxable hereunder, and who has not paid the tax imposed by this article, shall make a return and pay the tax to the finance director. The use, storage or consumption of tangible personal property includes for the purpose of this article, materials, commodities and items of tangible personal property affixed to or made a part of facilities and structures on real property owned or leased situated within the city.

RELATED TOPICS

**COUPONS, DISCOUNTS AND PROMOTIONAL ITEMS
EXEMPT PURCHASES CONVERTED TO TAXABLE USE**

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.