SPECIAL SALES/USE TAX REGULATIONS

These Special Regulations are promulgated to better provide for specific businesses and special circumstances. They shall apply in addition to and have the same effect as the regulations cited in statute citation manner.

Manufacturers and Prefabricators Acting as Contractors	37	SR-29	1977
Modular or Sectional Homes	37	SR-30	1977
Morticians	38	SR-31	1977
Newspapers, Magazines and Other Publications	39	SR-32	1977
Optical Sales and Services	40	SR-33	1977
Photographers and Photofinishers	40	SR-34	1977
Printers and Printing	41	SR-35	1977
Private Clubs	43	SR-36	1977
Ready-Mix Concrete	43	SR-37	1977
Repossessed Property	43	SR-38	1977
Sand and Gravel	45	SR-39	1977
Service Enterprises	46	SR-40	1977
Tools, Jigs, Dies, Patterns, Molds, etc.	48	SR-41	1977
Upholsterers	48	SR-42	1977

SR-1 ADVERTISING AGENCIES

Advertising agencies primarily furnish a service for their customers and, in connection with furnishing such service, acquire items of tangible personal property which are used by the agencies to perform a service or which go to their customers in connection with the performance of the service.

1. If the advertising agency is primarily performing a service and does not sell tangible personal property, it does not need a sales tax license. Purchases of articles delivered in Colorado are subject to sales tax imposed by a Colorado vendor, or are subject to Colorado consumers use tax if purchased outside Colorado or from an unlicensed Colorado source.

2. If an agency acquires articles for resale to its clients, the agency must have a sales tax license to purchase such property tax free for resale. The sales tax charged by the agency would apply to the total amount of the retail sale of property prepared by its employees or acquired from outside sources. Sales by an advertising agency of direct mail advertising pieces, hand-outs, throwaways, and similar articles are subject to sales tax if delivered to customers in Colorado.

3. An agency could operate under both (1) and (2) of this regulation. If so, records must be maintained to account for retail sales to customers. Also, purchases subject to use tax, because of their use in the performance of service contracts, must be accounted for.

SR-2 (2002) AGRICULTURAL PRODUCERS

LIMITED FARM EQUIPMENT EXEMPTIONS:

Effective July 1, 1999, and as modified effective July 1, 2000, a sales tax exemption is provided for

certain qualifying farm and ranch vehicles and certain other items when used in qualifying activities. All these exemptions apply to state sales and use tax only, and are not available for RTD tax or local taxes unless specifically adopted by the taxing authority.

The activities qualifying for exemption are agricultural, viticultural, fruit, vegetable, milk, honey, poultry, egg and livestock production. Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca and goats or other animal raised for food, fiber or hide production, and alternative livestock under 35-41.5-102, C.R.S. but not pet animal as defined in 35-80-102(10), C.R.S.

An “agricultural commodity” means any agricultural commodity as defined in 35-28-104(1) C.R.S. except that, for purposes of this sales tax exemption, “agricultural commodity” shall also include sugar beets, timber, and timber products, oats, malting barley, barley, hops, rice milo, and other feed grain.

While the broad term “farm equipment” is used in the exemption statute, only non-registered vehicles, trailers and towables are included as exempt. The exemption law defines farm equipment to be farm tractors and implements of husbandry as defined in motor vehicle statutes. These motor vehicle definitions are based on the segregation of vehicles into registered and non-registered classifications.

“Farm tractor” means every motor vehicle which is designed and used as a farm implement, and “implement of husbandry” means every vehicle that is designed, adapted or used for agricultural purposes. Thus, other than irrigation equipment, no fixed equipment is exempt, regardless of how movable or how often it is moved. Where plants, crops or livestock are brought to the equipment, the equipment remains taxable. [42-1-102(33) and 42-1-102(44) C.R.S.]

Vehicles taken into fields, corrals, etc., and moved about on the land to perform work with plants, crops or livestock are the items considered for exemption, with the other restrictions as noted below. Any vehicle licensed for highway use is disqualified.

The purchased or leased property must be used directly and primarily on a farm, ranch or at a “livestock production facility.” It cannot be used incidentally for agricultural use, and not for janitorial, building maintenance, office, sales, distribution (even of farm products), research or transportation use. A “livestock production facility” means any structure used predominantly for the housing, containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine houses. [39-26-102(5.7)]

NOTE: Materials to construct barns, corrals, feedlots, etc., are <u>not</u> exempt from taxation.

For farm equipment to be exempt, there must be primary use with plants or livestock produced for profit. It does not include, for example, home gardens with incidental sales, weed mowing, petting zoos, stables for pleasure riding, trail riding or pack use of horses, mules, llamas, polo horses, etc

The purchase must be qualifying “farm equipment”:

- Irrigation equipment having a per unit purchase price of at least $1,000,
- Vehicles that qualify as implements of husbandry are those vehicles that are exempt from registration and are designed, adapted or used for agricultural purposes. An example would be a feed truck. Trailers designed to carry this equipment are also implements of husbandry,
- Attachments to exempt farm tractors or implements of husbandry that are machinery and equipment that aid or enhance the performance of the tractor or implement,
- Bailing wire, binders twine, surface wrap and, from July 1, 2000, pallets, from July 1, 2001 crates or similar items,

- Aircraft designed or adapted to undertake agricultural applications, but the agricultural application use must be the primary use and not merely incidental to a farm operation from July 1, 2000,

- Parts for maintenance and repair of the farm equipment that qualifies for exemption from July 1, 2000.

- Dairy equipment used at a dairy farm (and not in commercial milk production) qualifies for exemption from July 1, 2001

Exemption equipment also includes hay balers, hay stacking equipment, combines, tillage and harvesting equipment, and other heavy movable farm equipment primarily used on farms and not on highways. Trailers specially designed to move such equipment on highways are considered component parts of such implements of husbandry. [42-1-102(44) C.R.S.]

The purchase is not exempt if it is subject to registration as a vehicle under 42-3-103, C.R.S. or if its use is incidental to farm, ranch or livestock production facility operation. Leased farm equipment that otherwise qualifies under the above restrictions must have a fair market value of at least $1,000 in order to qualify for the exemption.

AFFIDAVIT REQUIRED:

Buyers must sign and complete the affidavit specified by the Director, testifying to their qualification for exemption. The form version dated 08/00 or later must be used for purchases after July 1, 2000. Vendors must retain the affidavit for three years from the date they file that month's sales tax return. The department may request copies of such affidavits at any time during that three year period. Buyers remain liable for tax, interest and any applicable penalties if the purchase is used in a manner that does not qualify for the exemption.

SALES AND USE TAX EXEMPTION ON PESTICIDES

Effective July 1, 1999, purchases of pesticides or other substances registered by the Colorado Commissioner of Agriculture as agricultural use pesticides under the Pesticide Act (C.R.S. 39-9-101 et. Seq.) are exempt from state sales and use tax and any special district sales and use tax when purchased from a dealer licensed and registered under section 35-9-115 of the act.

Substances not registered for agricultural use are taxable and any purchase from a non-registered dealer is taxable.

Licensed pesticide dealers can inform their customers about pesticides that are registered under the Pesticide Act. And any pesticide qualified for agricultural use will have a statement on the packaging in the “Worker Protection Box,” or in the “Directions for Use.”

Contact the Colorado Department of Agriculture, to obtain the “Restricted Use Pesticides Dealers List.”

This exemption applies to state sales and use tax only. Unless cities and counties have adopted an ordinance or resolution to exempt pesticides, local taxes are due on the purchase or sale of pesticides. Refer to “Colorado Sales/Use Taxes” (DRP 1002), published by the Department of Revenue to determine if a city or county has allowed this exemption. “Home-rule” cities are also listed in the DRP 1002. Some home-rule cities enact their own sales tax ordinances and collect their own taxes. Contact home-rule cities directly for their rules regarding sales taxes.

SALES AND USE TAX EXEMPTION ON AGRICULTURAL COMPOUNDS

Effective July 1, 1999, all sales and purchases of agricultural compounds that are consumed by,

administered to, or otherwise used in caring for livestock are exempt from Colorado state sales and use tax; state-collected local sales and use tax and any special district sales and use tax. This exemption also applies to all sales and purchases of semen for agricultural or ranching purposes.

“Agricultural compounds” means:

- Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;
- Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and
- Animal pharmaceuticals that have been approved by the Food and Drug Administration.

The exemption for these compounds only applies to using the compounds in caring for livestock. Any of these compounds may be taxable when used in agriculture, unless exempted under another specific provision.

Home-rule/self-administered cities enact their own sales tax ordinances and collect their own taxes. Contact these cities directly for rules regarding sales taxes. For a list of homerule cities, refer to “Colorado Sales/Use Taxes” (DRP 1002).

GENERAL ISSUES

“Agricultural producer” means a person regularly engaged in the business of using land for the production of an agricultural commodity or livestock. The term includes persons engaged in agricultural, viticultural, fruit, vegetable, milk, honey, poultry, egg and livestock production. Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca and goats or other animal raised for food, fiber or hide production, and alternative livestock under 35-41.5-102, C.R.S. but not pet animal as defined in 35-80-102(10), C.R.S.

An “agricultural commodity” means any agricultural commodity as defined in 35-28-104(1) C.R.S. except that, for purposes of this sales tax exemption, “agricultural commodity” shall also include sugar beets, timber, and timber products, oats, malting barley, barley, hops, rice milo, and other feed grain.

“Agricultural producer” does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products primarily for his own consumption.

Containers, crates, pallets, labels, and furnished shipping cases purchased by an agricultural producer are not subject to tax. “Containers” and “shipping cases” that are exempt when sold to agricultural producers include wire, twine, rope, tape, and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products.

Fertilizer purchased by an agricultural producer is not subject to tax. “Fertilizer” includes compounds of nitrogen, phosphorus, potassium, trace elements or similar materials or substances which provide essential plant food elements and which become ingredients of the growing plant. “Fertilizer” does not include soil, sand, peat moss, limestone, mulches and similar materials primarily used to condition the soil or to preserve or facilitate plant growth, regardless of incidental nutritive value; therefore, purchases of such things are taxable.

SR-3 AUTOMOBILE DEALERS AND DEMONSTRATION VEHICLES

QUALIFICATIONS:

Taxability of motor vehicles operated with Full Use Plates, pursuant to C.R.S. 42-3-127(6), and used by automobile dealers for demonstrations and other company purposes is explained by the following rule.

C.R.S. 42-3-127(6)(c) states, “Full-use dealer plates may be used only for vehicles owned and offered for sale by the dealer or wholesaler. Full-use dealer plates shall not be used on vehicles…that are commonly used by that dealer as tow trucks or vehicles commonly used by that dealer to pick up or deliver parts.” This sales tax regulation cannot be applied to determine sales or use tax due on vehicles that are ineligible for full-use dealer plates. Dealer owned vehicles used in any manner that are ineligible for C.R.S. 42-3-127(6) plates are subject to imposition of use tax on the full purchase price paid by the dealer.

(1) A vehicle actually sold to a salesman, partner, or other official of the dealer's company is subject to the sales tax on the selling price or, if there is a trade-in allowance, on the net selling price of the vehicle.

(2) (a) A motor vehicle dealer who uses a motor vehicle for other than “promotion of business,” as defined in (3)(c) below, shall, at his election, pay a use tax upon the dealer's net invoice price, or on a price determined in either section (5) or (6) below.

(b) A motor vehicle dealership which elects and pays tax on four or more full use license plates under method (5) below shall not be subject to additional sales or use tax on any vehicle operated within the requirement of the statute for full use license plates.

(c) A motor vehicle dealer electing to pay tax based on method (5) below, who

(i) has full use license plates revoked, seized by or returned to the Department and that revocation is finally upheld; or

(ii) is cited for an unauthorized use of a full use license plate by the Department and that action is finally upheld;

will be subject to a tax in addition to the tax computed under method (5) based on the extent to which a full use license plate(s) that was revoked or the subject of a citation was used on a vehicle(s) which were not offered for sale by the dealer or wholesaler as required by the full use license plate statute.

(d) Where a motor vehicle dealership elects method (5) below and has less than four full use plates upon which to base the sales tax computation, method (5) below will be computed and paid even though the computation will be based on a partial vehicle value. For a dealership with less than four full use plates subject to method (5), where a motor vehicle is not a vehicle available for and in fact used for the promotion of business under (3) below, individual vehicles may be subject to sales or use tax. If a use tax on this basis is greater than the sales tax paid under method (5), use tax in excess of the tax paid may be assessed by the Department of Revenue.

(3) The dealer's use of an inventory or stock vehicle is not subject to a use tax if this vehicle is available for and in fact used for the promotion of business. Definitions of terms used in this rule:

(a) “Available for use in the promotion of the business of selling vehicles by the dealership” means that the vehicle is “on the dealership premises” during a substantial portion of the normal business hours. “On the dealership premises" includes: (1) displaying vehicles

within specially prepared spaces that have advertising for the dealership in the public areas of malls, arenas, theaters, etc., and any off-premise licensed location, provided the vehicles are driven or moved directly from the dealership to the display and returned directly from the display locations to the dealership by employees; (2) the use of a demonstrator vehicle by a full time salesperson permanently assigned a sales territory away from the dealership location; and, (3) the use of the vehicle by a bona fide customer for temporary demonstration.

(b) "In fact used" means that the vehicle not only must be available but actually must be used by the dealership in the promotion of its business.

(c) "Promotion of business" means any efforts to sell motor vehicles, but does not include vehicles used in the dealer's service or repair business, or vehicles driven or used by non-employee family members or guests.

(This section (3) is inapplicable to dealers with more than four full use plates reporting tax under method (5) below.)

(4) Deleted.

(5) TAX COMPUTATION OPTION (5): The dealer shall use this subsection (5) when authorized by the Qualifications of this regulation, and remit the tax with the filing of the sales tax return based on their choice of the method under this section (5) for the entire dealership:

(a) 15% OF FULL USE LICENSE PLATES OPTION: A dealership electing this method shall report as taxable sales and pay all applicable sales tax rates on a taxable amount computed by the following methods: Compute 15% of the average number of full use license plates issued to the dealership during a full or any part of a calendar year, rounded to the nearest tenth, and multiply that number times the IRS annual lease value (ALV)[fn1] of the average retail sale price[fn2] of all motor vehicles sold at retail by the dealership during the year.

[fn1]Annual Lease Value Table, IRC Regulation 1.61-21(d)(2)(iii), Code of Federal Regulations 26 CFR 1.61-21(d)(2)(iii). [see Code of Federal Regulations Internet Site address: http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1 Go to: Title 26, CFR Part 1 Section 61-21]

[fn2]The retail sale price of leased automobiles will be the Gross Capitalized Cost, as defined in the Federal Consumer Leasing "Regulation M", (Code of Federal Regulations 12 CFR 213.2), less any taxes, insurance, service agreements or outstanding prior credit or lease balances if included in Gross Capitalized Cost. [Code of Federal Regulations Internet Site address: http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1 Go to: Title 12, CFR Part 213 Section 2]

For example: if the average number of full-use plates issued for the calendar year at issue were 20, then 15% of 20 would be 3. If the total sales price of all motor vehicles sold at retail (the price of motor vehicles sold at wholesale is not included) for the preceding calendar year was $19,500,000 and there were 1,500 motor vehicles sold at retail (the number of motor vehicles sold at wholesale is not included) for that year, then the average retail sales price would be $13,000 per motor vehicle. The IRS ALV for a $13,000 vehicle for the 2000 taxable year is $3,850 and multiplied times the three (15% of the 20 full-use plate vehicles) equals $11,550. Thus $11,550 is taxed for sales tax purposes at the applicable sales tax rate. The sales tax is remitted via a DR-0100A submitted with the annual renewal of full-use license plates. The first year full use plates are issued to a new dealer is not a renewal and will not require a tax payment, however the tax remains due even if the dealer goes out of business and does not renew for a year.

(6) TAX COMPUTATION OPTIONS: The dealer shall use this subsection (6) when authorized by the Qualifications of this regulation, and remit the tax with the filing of the sales tax return

based on their choice of one of the following methods for the entire dealership:

(a) WORKING CONDITION FRINGE BENEFIT OPTION: A dealership electing this method shall report as taxable sales and pay all applicable sales tax on all amounts that are reported or should have been reported as income for demonstrator use by individuals who do not qualify for IRS working condition fringe benefit status. However, all full time employees or owners who work at the dealership site are not subject to tax on their use of vehicles. Thus any vehicle use by an individual that does not qualify for the working condition fringe benefit exclusion from federal adjusted gross income, would be taxable on lease values for the period of use.

OR,

(b) SPECIFIC IDENTIFICATION OPTION: A dealership electing this method shall report by identifying the specific dates that specific vehicles are not on the dealership premises during a substantial portion of the normal business hours. Under this method, determine retail sale prices for the vehicles used and obtain IRS annual lease values (ALV) for those prices, divide the annual lease value by 365 and multiply by the days the vehicle was not on the dealership premises a substantial portion of normal business hours, and report the sum of these weighted lease values as taxable sales subject to all applicable sales taxes.

OR,

(c) FAIR MARKET VALUE LEASE OPTION: A dealership electing this method shall report for any individual user by determining a lease value based on what a fair market value lease payment would be of the type or class of vehicle used. All applicable sales tax would be reported and paid on the sum of such fair market values for all individuals using cars in a non-promotional manner. This method may be used in conjunction with any one of the other methods described, by assigning the full use plate used by an individual and that individual's use entirely to this method of reporting.

(7) All methods will require records to support the method selected, and records to support full use plates which are deemed to be used on vehicles present at the dealership for a substantial portion of normal business hours. If the dealership does not maintain such records, or does not remit tax where appropriate, the Department will impose the tax based on the best information available.

SR-3.1 - 2001 AUTOMOBILE DEALERS AND SPECIAL EVENT VEHICLES

This regulation addresses the sales or use taxability of motor vehicles operated with any special license issued, if such plates are issued pursuant to C.R.S. 42-3-122 or other sections, but excluding any license plates issued under C.R.S. 42-3-127(6).

BACKGROUND:

Certain Special Event organizers may desire the temporary use of motor vehicles for specific periods of less than 30 days. Event organizers and participants use these vehicles in the same manner that rental vehicles would be used, and the purchase of one of the temporary use vehicles by the organizer or participants is not expected. Motor vehicle dealers or manufacturers may donate vehicles, including untitled motor vehicles operated under Manufacturer's Certificate of Origin (MCO) to the event organizer. The event organizer distributes the use to participants in lieu of obtaining commercial rental cars for participants. The donation or gift of an item requires the sales or use tax be paid by the donor, see Sales

and Use Tax Special Regulations, “Gifts, Premiums and Prizes.”

C.R.S. 42-3-122 provides for this issuance of “Special License Plates”, but does not specifically provide for license plate issuance without registration, or for transfer of plates from vehicle to vehicle, such as is specifically provided by C.R.S. 42-3-127. The motor vehicle registration statutes do not create any exemption from sales tax for the special event vehicles.

Where a dealer, manufacturer, or special event organizer requests Special License Plates for use on donated motor vehicles, the donor of motor vehicles for such use is subject to the payment of sales or use tax. The donation for use at a special event is temporary in nature, the donation to the organizer of limited term and conditions much like a rental. The Colorado Sales Tax Act requires the application of sales or use tax to all use or consumption. Commercial rental motor vehicles are either taxed at their full purchase price, or, when elected by the renter, the sales tax is collected on the rental payments. Therefore the special event use of the vehicle is subject to the payment of a sales tax as computed below.

SALES TAX COMPUTATION:

A dealership or manufacturer shall report and make a tax return and payment to the Department of sales tax on a taxable amount computed by the following method. The total number of the special event license plates issued for the event will be multiplied times the monthly amount computed from the IRS annual lease table value based on the average of the retail sale price[fn3] of all new vehicles provided to the event. A daily rate computed under the IRS method will be allowed if the days of use for the special event plates times that daily rate produce a lower lease value. Please note the daily rate is 4/365 times the annual rate, per the IRS procedure in Regulation 1.61-21(d)(4)(B)(ii).

[fn3]The retail sale price of an special event automobiles will be the Gross Capitalized Cost, as defined in the Federal Consumer Leasing “Regulation M”, (Code of Federal Regulations 12 CFR 213.2), less any taxes, insurance service agreements or outstanding prior credit or lease balances if included in Gross Capitalized Cost. [Code of Federal Regulations Internet Site address: http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1 Go to: Title 12, CFR Part 213 Section 2]

For example: If twenty special event license plates are requested for a special event, and if the total suggested retail sales price of all motor vehicles used at the event was $500,000 and there were 20 motor vehicles used, then the average retail sales price would be $25,000 per motor vehicle. The IRS average lease value for a $25,000 vehicle for the 2000 taxable year is $6,850, one-twelfth of that value is $571. The $571 monthly value multiplied times the twenty special event license plates equals $11,420. Thus $11,420 is taxed for sales tax purposes at the applicable sales tax rate. The sales tax is remitted via a DR-0100A. The Department will stamp a receipt for payment on a duplicate copy of the return, prepared by the taxpayer for this purpose.

Automobile Lease Value Table as of 4/2001 (1993 to date)

fair market value at first day of use		annual lease value	monthly lease value
beginning value	to ending value		
$ 2,000	$ 2,999	$ 1,100.00	$ 92
$ 3,000	$ 3,999	$ 1,350.00	$ 113
$ 4,000	$ 4,999	$ 1,600.00	$ 133
$ 5,000	$ 5,999	$ 1,850.00	$ 154
$ 6,000	$ 6,999	$ 2,100.00	$ 175
$ 7,000	$ 7,999	$ 2,350.00	$ 196
$ 8,000	$ 8,999	$ 2,600.00	$ 217
$ 9,000	$ 9,999	$ 2,850.00	$ 238
$ 10,000	$ 10,999	$ 3,100.00	$ 258
$ 11,000	$ 11,999	$ 3,350.00	$ 279
$ 12,000	$ 12,999	$ 3,600.00	$ 300

$ 13,000	$ 13,999	$ 3,850.00	$ 321
$ 14,000	$ 14,999	$ 4,100.00	$ 342
$ 15,000	$ 15,999	$ 4,350.00	$ 363
$ 16,000	$ 16,999	$ 4,600.00	$ 383
$ 17,000	$ 17,999	$ 4,850.00	$ 404
$ 18,000	$ 18,999	$ 5,100.00	$ 425
$ 19,000	$ 19,999	$ 5,350.00	$ 446
$ 20,000	$ 20,999	$ 5,600.00	$ 467
$ 21,000	$ 21,999	$ 5,850.00	$ 488
$ 22,000	$ 22,999	$ 6,100.00	$ 508
$ 23,000	$ 23,999	$ 6,350.00	$ 529
$ 24,000	$ 24,999	$ 6,600.00	$ 550
$ 25,000	$ 25,999	$ 6,850.00	$ 571
$ 26,000	$ 27,999	$ 7,250.00	$ 604
$ 28,000	$ 29,999	$ 7,750.00	$ 646
$ 30,000	$ 31,999	$ 8,250.00	$ 688
$ 32,000	$ 33,999	$ 8,750.00	$ 729
$ 34,000	$ 35,999	$ 9,250.00	$ 771
$ 36,000	$ 37,999	$ 9,750.00	$ 813
$ 38,000	$ 39,999	$ 10,250.00	$ 854
$ 40,000	$ 41,999	$ 10,750.00	$ 896
$ 42,000	$ 43,999	$ 11,250.00	$ 938
$ 44,000	$ 45,999	$ 11,750.00	$ 979
$ 46,000	$ 47,999	$ 12,250.00	$ 1,021
$ 48,000	$ 49,999	$ 12,750.00	$ 1,063
$ 50,000	$ 51,999	$ 13,250.00	$ 1,104
$ 52,000	$ 53,999	$ 13,750.00	$ 1,146
$ 54,000	$ 55,999	$ 14,250.00	$ 1,188
$ 56,000	$ 57,999	$ 14,750.00	$ 1,229
$ 58,000	$ 59,999	$ 15,250.00	$ 1,271

[3]The retail sale price of an special event automobiles will be the Gross CapitalizedCost, as defined in the Federal Consumer Leasing “Regulation M”,(Code of Federal Regulations 12 CFR 213.2), less any taxes, insurance serviceagreements or outstanding prior credit or lease balances if included in GrossCapitalized Cost. [Code of Federal Regulations Internet Site address: http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1Go to: Title 12, CFR Part 213 Section 2]

SR-4 AUTOMOTIVE REPAIRS

Parts and accessories installed in automotive vehicles are of the same nature as other sales of tangible personal property and, accordingly, are taxable. The taxable amount is the total charge made to the customer, with deductions therefrom allowed for service or labor charges if separately stated.

If the repair of an automobile is subcontracted to another repairman by the customer's repairman, the sub-repairman will charge sales tax to the customer's repairman on the retail price of the parts used in the repair job unless specifically instructed that the job is for resale, in which case the tax will be billed to the

customer by the customer's repairman. In either case, an itemized bill from the sub-repairman must be available to the customer to show that tax was charged by one or the other repairman.

Automobile dealers, garages, repairmen, etc., may purchase tax free only tangible personal property for resale. This exemption does not apply to service vehicles, machinery, equipment, supplies, tools, etc., which they purchase for their own use or consumption and not for resale. Supplies consumed in the performance of a job, such as sandpaper, masking tape, etc., are taxable to the repairman.

SR-5 BROADCASTING STATIONS AND OTHER MEDIA

Purchases of tangible personal property by broadcasting stations are subject to tax if title to the property is acquired by the stations and the property is not to be resold in the regular course of business. Such purchases include equipment, materials and supplies for transmitter (phonograph records, blank discs, etc.,) relay, studio, business office and general station facilities.

Advertisements for a Colorado vendor making retail sales of tangible personal property to Colorado residents through a broadcasting station or by direct orders to the advertiser must state that sales tax must be added to the sales price remitted by Colorado residents.

SR-6 CEMETERIES

Cemeteries must charge sales tax on the selling prices of cement vaults, liners, markers, sod and similar items.

Persons constructing above ground burial structures or below ground concrete foundations are deemed to be constructing improvements to real property and must follow the “Contractor's Rule”.

Also See “Morticians” in this section.

SR-7 COMPUTER SOFTWARE

[Repealed]

SR 7.5 - 2002 COMPUTER SOFTWARE AND MAINTENANCE AGREEMENTS

[Repealed]

SR-8 CONSIGNED MERCHANDISE SALES

Regardless of the status of the consigned inventory for the purpose of any other tax and regardless of whether the retail customer knows that inventory is not owned by the vendor, the vendor is (1) the retailer of the property and (2) liable for the tax due on the retail sales.

SR-9 CONTAINERS

Sales of containers, labels, tags, cartons, packing cases, wrapping paper, twine, wire, pallets, skids, bags, shipping cases, bottles, cans, similar articles and receptacles sold to manufacturers, producers, wholesalers, jobbers, retailers, or other licensed vendors, for use as containers, labels, and furnished shipping cases for articles sold by them are not taxable. See, *Weed v. Occhiato*, 488 P.2d 877 (Colo. 1971); *Adolph Coors Co. v. Charnes*, 690 P.2d 893, (Colo. App. 1984), aff'd 724 P.2d 1341 (Colo. 1986). See, also, SR-2, Agricultural Producers, for sales tax application for farm pallets, crates, bailing wire, and other shipping items.

Deposits on returnable containers are not subject to sales tax.

SR-10 CONTRACTORS

(1) **Contractors defined:** Any individual, partnership, firm, association, corporation, trust, estate or joint venture who performs construction work on real property for another party under the terms of an agreement, is a contractor within the meaning of this regulation. An individual working for a salary or wages is not considered a contractor. This regulation never applies to work on personal property or repair of personal property.

"Contractor" includes building contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing and heating contractors, and also includes any other person engaged, under a contractual arrangement, in the construction, reconstruction, or repair of any building, bridge or structure. For the purpose of this rule, "subcontractor" has the same meaning as "contractor".

(2) **Application of sales tax:** All contractors, as defined in (1) above, who purchase in this state tangible personal property which is to be built in by them into some building or structure, are regarded for purposes of the Act as retail purchasers and must pay sales tax to the vendors. Contractors must pay tax on all tangible personal property used in their business or on their jobs if the delivery, storage, use or consumption of the property is in Colorado. The contractor must pay the use tax directly to the state. Sales or use tax is payable on all purchases of equipment, material, supplies, tools, etc.

Building materials purchased by contractors for construction work on property owned by the United States Government, State of Colorado, charitable organizations, schools, or political subdivisions are taxed or exempted from sales or use tax depending on the date of acquisition.

The contractor must file an application for an exemption certificate on a form prescribed by the Department of Revenue. If approved, the department will issue an exemption certificate to the contractor. (See C.R.S. 1973, 39-26-114(1)(a)(XIX).)

(3) **Application of sales and use tax for the retailer - contractor:** Some contractors as defined in (1) above, also may be retail merchants of building supplies or construction materials which were purchased tax free for resale. The contractor who invoices separately for labor and materials must charge sales tax on the marked up billing price of all materials. If the contractor bills with a lump sum contract, all supplies and materials are taxable on the contractor's cost.

An over-the-counter sale of a complete unit not made to order, with an agreement for installation of the unit, is not a building contract. This rule includes sales of stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors, garage doors, storm windows, screens, sod and similar items. On such sales the sales tax must be collected from the purchaser by the retailer-contractor. If the installation charges are segregated in the bid proposal or sales invoices, these charges are not taxable. Repairs of such articles are not considered repairs to real property as contemplated in the "contractor's rule".

(4) **Sales tax returns:** (a) Contractors are not required to file sales tax returns. They will pay the sales tax to the persons in Colorado from whom they make purchases of tangible personal property or, if purchased out of Colorado or from an unlicensed person, the contractor will report the tax on a consumer's use tax return. (b) Retailer-contractors are required to include in their sales tax returns the tax on the acquisition cost of materials and supplies removed by them from their tax free stocks and used on jobs for which an exemption certificate has not been obtained under the circumstances described in paragraph (3), preceding.

(5) **Licenses:** Retailer-contractors must have a Colorado store/sales tax license for each store location. No sales tax license will be issued to regular contractors. They are not retailers of tangible personal property and are deemed to be users or consumers of all articles used by them.

(6) **Subcontractors:** Any subcontractor purchasing materials for his job is the user or consumer of the materials and liable for the payment of the sales or use tax on the purchases. No sales tax license will be issued to subcontractors.

SR-10.1 - 2002 PRIORITY - CREDIT FOR TAX PAID OTHER STATE

When a construction contractor has purchased building materials in another state that are resold in this state, that are manufactured into other building components that are resold in this state, that are installed into a construction project in this state, or that are placed in inventory and then withdrawn for one of those other three uses at a later time, a credit against sales or use tax owed to this state up to the amount of tax owed shall be allowed as follows:

a.) for sales tax paid upon the initial purchase of building materials in the otherstate;

b.) for use tax paid upon the withdrawal of the building materials from inventory in the other state.

SR-11 COUPONS

Retailers accept coupons from their customers for a reduction in the regular selling price of an article. These coupons are classified as either manufacturer's coupons or store coupons.

A manufacturer's coupon is issued by the manufacturer of an article and allows the customer a reduction in the sales price of the product upon presentation of the coupon to the retailer. Because the retailer is reimbursed by the manufacturer for the amount of the reduction, sales tax applies to the full selling price before the deduction for the manufacturer's coupon.

A store coupon is issued by the retailer for a reduction in the sales price of an article when the coupon is presented to the retailer by the customer. Because there is no reimbursement to the retailer for such reduction, the sales tax applies to the reduced selling price of the article.

SR-12 DENTAL LABORATORIES AND DENTISTS

A purchase made by a dental laboratory, which becomes a constituent part of a prosthetic device to be resold to a dentist, is exempt from sales and use tax. Purchases of supplies and materials that do not become constituent parts of a prosthetic device are taxable. Sales of prosthetic devices to a dentist are exempt from sales or use tax.

Prosthetic devices are replacements for lost or missing natural parts, or are the addition of devices through prosthetic dentistry to aid the dental bodily functions. Prosthetic dentistry consists of the use of inlays, crowns, replacement of lost teeth, bands, brackets, and other band attachments, wires, intraoral and extraoral traction devices, and retaining or holding appliances and other devices which aid in the dental bodily functions. Gold and silver used for fillings are also exempt.

General business equipment and supplies are taxable as are all hand instruments and other items used for patient care, and dental equipment and furnishings, and supplies used for patient diagnostic records.

Dental laboratories must obtain a sales tax license and must collect and remit sales tax on taxable sales.

SR-13 EATING AND DRINKING ESTABLISHMENTS

The sale of meals and beverages is subject to sales tax and any person making such sales must acquire a sales tax license and collect sales tax based upon the total consideration paid thereon.

Caterers and other persons similarly engaged are liable for sales tax on the total selling price of items sold and/or charges for service essential to providing meals and beverages.

Private enterprises, such as commercial and manufacturing companies, and public agencies, such as governmental organizations, regularly serving, and charging their employees or the public for meals and beverages, are liable for sales tax based upon the selling price of such meals and beverages.

Fund-raising meals priced in excess of the regular selling price are subject to tax on the regular selling price.

The vendor of meals and drinks must pay the tax on purchases of most products used or consumed in the operation of his business, including fixtures, linens, silverware and glassware. *Carpenter v. Carmen Co.*, 111 Colo. 566, 144 P. 2d 770, (1943). Plastic and paper products such as tablecloths, towelettes, napkins, soda straws, plates, knives, forks, spoons, and cups are specifically exempt from sales tax. 39-26-114(1)(a)(XVI) and 39-26-114(1)(a)(XVII) C.R.S.

When a customer purchases one dinner and receives another dinner free by presenting a coupon issued by the restaurant, sales tax applies only to the price actually paid (the discounted price). However, when an entity other than the restaurant issues a coupon, the restaurant is not reducing its purchase price, but, rather, is accepting payment from a third party. Therefore, the sales tax is due on the full (non-discounted) purchase price when the coupon used is from an entity other than the restaurant. See, Special Regulation 11 (Coupons).

Boarding houses that serve meals only to persons regularly boarding there and not to the public should not collect sales tax on the meals. Such boarding houses are exempt from sales tax on their purchases of food, but must pay sales tax on all non-food items.

“Bed and Breakfast” inns are engaged in selling meals and accommodations and the entire charge made is subject to sales tax. Therefore, Bed and Breakfast inns can purchase food served to paying guests and guestroom supplies, such as tissue, soaps, lotions, or shoeshine cloths, free of sales tax.

The following gratuities are not subject to sales tax if the total amount of the gratuity is distributed by the vendor to persons who actually render the service: cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to sales check by the patrons for use of those providing the service), banquet tips, and tips separately stated and added to the sales check by the vendor at a flat rate.

SR-14 FABRICATING, PRODUCING AND PROCESSING

“Fabricating, producing, and processing” includes any operation which results in the creation or production of an article of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of such an article. The terms exclude operations not so related for the creation or production of such an article.

An operation that changes the form or state of tangible personal property is fabrication. Persons regularly engaged in fabrication or production of articles for sale at retail shall collect tax on the sales of such property. If the fabricator converts such property to his own use, the fabricator shall remit use tax calculated on the acquisition cost of the materials.

The tax applies to the total charges for fabrication or production of an article of tangible personal property made to order. For example, if a manufacturer orders a machine part from a machine shop, tax shall be paid on the total charge for the part, including labor, although charges for labor may be segregated from the cost of the materials. Similarly, the total charge for making drapes is subject to tax.

Tax does not apply if an exemption is claimed such as when a buyer intends to resell the fabricated item without otherwise using the item, or when a fabricator produces an item that is exempt in the hands of the buyer (e.g., if the fabricated property is purchased by a manufacturer and is machinery or machine tools that qualify under 39-26-114(11) C.R.S., 39-26-203(1)(y) (use tax exemption) or 39-30-106 (tax exemption

in an enterprise zone)). The fabricator should obtain the necessary information to establish that the sale is exempt, such as obtaining the buyer's sales tax account number or exemption certificate number or a file Department form DR-1191 for machinery or machine tools.

SR-15 FEDERAL AREAS, SALES ON

“No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any state, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the grounds that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a federal area; and such a state or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any federal area within such state to the same extent and with the same effect as though such area was not a federal area.”

“The provisions of sections 105 and 106 of this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.” (See Title 4, U.S.C.A., Section 105-110, 197., (Buck Act).) [The following added 2001] However contractors with the federal government cannot assume the tax exemption of the federal government unless the contractor is, for all legal purposes the agent of the federal government. Purchases made in behalf of the federal government, by a non-agent contractor who used the purchases in the performance of a contract service with the federal government, are taxable. (Regional Transportation District v. Martin Marietta Corp., 805 P. 2d 1102 (Colo. 1991)

Any person making retail sales of tangible personal property on an Native American reservation located within the boundaries of the state of Colorado shall be required to obtain a Colorado retail sales tax license and shall collect and remit sales tax on retail sales to all parties except members of the tribe on whose reservation the sales take place (formerly, “non-Indians”). If such retailer is a Native American member of the tribe on which the store is located (formerly, “Indian”) or an exempt instrumentality, there will be no charge for the license. See —oe v. Confederation Salish and Kootenai Tribes, 425 U.S. 463, 48 L. Ed.2d 96, 96 S. Ct. 1634, (1976.) (Changes 2002.)

SR-16 FIDUCIARIES

Trustees, receivers, executors, or administrators who, by virtue of their appointment by a State or Federal Court, operate, manage, or control a business engaged in buying and selling of tangible personal property, including the liquidation of the assets of a bankrupt, insolvent, or deceased person, must acquire a store or sales tax license in the fiduciary's name and otherwise meet the collection and reporting requirements of the Act.

SR-17 FINANCIAL INSTITUTIONS

Banks, savings and loan associations, and similar financial organizations who offer gifts or premiums of tangible personal property as an inducement for opening an account, making a deposit or adding to an account are, for purposes of the Act, making sales of tangible personal property (see (1) below), or are making purchases (see (2) below).

These gifts and premiums are purchased by the financial institution and given to the customer or offered to the customer at a reduced price when a deposit is made to the customer's account. The purchase of these gifts and premiums or sales thereof are to be reported in the following manner:

(1) The sales of these premiums and gifts at their reduced price are treated as retail sales and the financial institutions must collect the sales tax from the depositor.

(2) The difference between the bank's purchase price and the cash price paid by the depositor will be taxable to the financial institutions.

[Following amended, 2002]

(3) If an item is given to the depositor, in consideration of depositing funds or using other financial services from which the bank may profit, the item's purchase price (cost) will be reported as a taxable sale on the appropriate line of the sales tax return, subject to state and applicable local sales tax.

SR-18 FREIGHT, DELIVERY, AND TRANSPORTATION

(1) Where tangible personal property is sold “F.O.B. shipping point” and the purchaser at that point assumes the risks of ownership, and transportation costs do not appear on the seller's invoice, the cost of transportation paid by the purchaser to the carrier is not subject to the tax.

(2) Where tangible personal property is sold “F.O.B. shipping point” and the invoice allows a credit for transportation charges paid or to be paid by the purchaser, the tax shall be computed on the total invoice charge.

(3) Where tangible personal property is sold on a delivered or “F.O.B. destination” basis, the tax shall be computed on the total charges, even though the seller bills the purchaser separately for the freight charges.

(4) Where the seller delivers the shipment and makes a charge which appears separately on the invoice, and in fact the seller assumes responsibility for loss and damage in transit, the tax shall be computed on the total invoice charge.

(5) Where the seller has prepaid the transportation charges which appear on the seller's invoice as an additional charge, or a separate invoice charge is made, the tax shall be computed on the total charges unless a satisfactory showing is made to the executive director that the seller was acting as a bona fide agent of the purchaser to effect transportation by the carrier of the purchased goods.

SR-19 GAS AND ELECTRIC SERVICES

Gas and electric services, whether furnished by municipal, public, or private corporations or enterprises, are taxable when furnished for commercial consumption, but are not taxable when sold for resale or for any of the uses set out in C.R.S. 39-26-102(21), or when subject to any of the general exemptions of the Act. (Also see Regulation 26-102.21.)

The tax applies to all amounts paid for taxable gas or electric services, irrespective of whether there is an actual consumption; the tax is imposed on all payments, whether in the form of a minimum charge, a flat rate, or otherwise.

Persons performing services, as well as stores, office buildings and other commercial users, are not industrial users and are required to pay the sales tax.

Electricity sold for commercial lighting purposes is taxable, but electricity sold for industrial use is exempt. Example: electricity used to light a restaurant is taxable; electricity used by a restaurant to prepare meals is exempt; electricity used to light chicken houses to stimulate egg production is exempt; electricity used to light an industrial plant to enable it to produce is exempt.

The following methods are available for restaurant operators to claim credit for sales tax on their purchases of gas and electricity used in processing food for immediate human consumption.

[The following sentence added, 2002] These credits or reductions only apply if a Colorado sales tax is charged against all the utility bills of the establishment or their landlord, and the utilities are used to

process food that when sold is subject to Colorado sales tax.

(1) If the sales of processed foods exceed 25% of the total sales revenue, the restaurant may receive credit against Colorado sales tax based on 55% of the Colorado sales tax paid on their purchase of gas and electricity.

(2) If the sales of processed food are 25% or less of total sales revenue, or the restaurant is metered for gas and electricity purposes as part of another business operation, such as hotel, motel, bowling alley, gas station, etc., then the following credit shall be computed. The allowable credit shall be the Colorado sales tax rate times 1/2 of 1% of the total Colorado processed food sales by the restaurant.

For the purpose of determining the applicable percentage of food sales, the term “food sales” shall include only sales of edible foodstuffs which are processed and sold for immediate consumption, but shall not include the sales of alcoholic beverages. The second method may be used even though the applicable percentage of food sales exceed 25%.

The credit shall be claimed on an annual basis on the January sales tax return for the previous year. In the case of a seasonal business, the credit shall be claimed on the June sales tax return. The computation for claiming this credit should be made on forms prescribed by the department of revenue.

SR-20 GIFT CERTIFICATES

Sales of gift certificates and similar documents, as well as their redemption for cash, are not subject to tax. If the gift certificates, etc., are redeemed for merchandise and not cash, sales tax is due on the total selling price of the merchandise.

SR-21 GIFTS, PREMIUMS, AND PRIZES

Purchases of tangible personal property for use as gifts, premiums or prizes, for which no valuable consideration is received from the recipient, are subject to tax on the total purchase price; the purchaser is deemed to be the user-consumer of such property. Examples would be gifts given to all individuals who attend a time-share real estate presentation, regardless of whether the individual buy or invest in the proposals. If the property is purchased from a licensed Colorado vendor, all applicable sales taxes should be paid to the vendor upon such purchases. If no sales tax is paid upon such purchases, the sales tax should be paid directly to the department of revenue by the purchaser. Any person purchasing tangible personal property to give away in any manner without contingencies, is a user or consumer and is liable for the tax thereon; such property includes advertising gifts and articles given as prizes, premiums, and for goodwill.

Where the donor of a tangible personal property gift and the receiver of the gift are involved in other financial dealings and the gift is contingent upon the “donee” entering into other transactions, the transfer of taxable property is subject to sales tax as a *quid pro quo* sale. Where the gift receiver's true object is to obtain the tangible personal property “gift”, or the value of the “gift” exceeds the other values obtained by the “donee”, the “donor” must remit sales tax on the fair market value of the taxable tangible personal property. Where the gift is secondary to the other transactions, the donor shall be subject to sales tax on their acquisition cost of the property. Examples include a service station giving a case of soda pop to everyone who buys over a minimum amount of gasoline, the soda pop is treated as sold by the service station at the station's cost.

SR-22 HOTELS AND MOTELS

Such supplies as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, coffee and other items available for guests use are not subject to sales or use tax at the time of purchase by the hotel or motel. These items are deemed supplied to the guest as part of the taxable sale of

accommodations. This exemption is based on resale of these consumables in a taxable transaction, and does not apply to rooms rented continuously for over thirty days that are not subject to sales tax under C.R.S. 39-26-114(1)(a)(VI).

Linens, furniture, pool equipment and supplies, and similar items are subject to sales or use tax at the time of purchase by the hotel or motel. [(See Colorado Springs v. Inv. Hotel Properties, 806 P2d375 (Colo. 1991)]

If a hotel or motel operates a restaurant or lounge, see special regulation SR-13 for “Eating and Drinking Establishments”.

[The following added 2002.]

BANQUET AND MEETING ROOMS:

A room used exclusively for a banquet, meeting or sales/display room is not subject to Colorado sales tax on charges for these uses. A room or suite with beds cannot qualify as exclusively used for any of the above exempt purposes.

UTILITIES:

Electricity, any gas and firewood are subject to Colorado sales tax as purchases at retail when acquired by hotel or motel operators for heating or lighting rooms, hallways, service areas and parking areas. Consumption of these services or goods is commercial consumption, not residential. No portion of the usage is exempt, regardless of whether use is inside or outside of rooms for accommodations, and regardless of whether the room charge is subject to sales tax or exempt under C.R.S. 39-26-114(1)(a)(VI). Any charge on a billing for rooms purporting to be a separate charge for heat, lights or firewood is fully taxable as a necessary component of the services taxed under C.R.S. 39-26-102(11) as a charge for the hire of a room or accommodation. The taxability of any separate charge shall not relieve the hotel or motel from the liability for sales or use tax on purchases of electricity, gas or firewood, as they are not resold in an unused condition. [(See Colorado Springs v. Inv. Hotel Properties, 806 P2d375 (Colo. 1991)]

SERVICE CHARGES:

For a taxable hotel or motel customer, no separate charge may avoid application of the Colorado Sales Tax unless such charge is accurately and reasonably related to a tax exempt service, and is completely disclosed to every customer as an optional service which the customer is not required to use because of the room rental. Thus maid service will always be taxable. Charges for use of pools, spas or health clubs must be fully disclosed and be truly optional, separately stated and reasonably related to the service in order to be exempt. In many cases, this means such services will need to be open to the public and not restricted to guests in order to qualify as non-taxable services not related to the room rental.

NON-TAXABLE CUSTOMERS:

Units of government and non-profit schools are exempt from Colorado sales tax, and these entities may rent rooms for employees or representatives without paying Colorado and Colorado collected sales tax, as long as payment is from governmental or school funds. Some of these entities have a Colorado exempt number, but it is not required. Native American tribal governments are governmental units and exempt from Colorado sales tax, where payments are made from tribal funds. Vendors must maintain proof that charges were made under government or school purchase or travel orders, and paid for directly to the seller by warrant or check drawn on government or school funds. Credit cards may be accepted where a credit card is in the name of the exempt entity and the entity is liable. See FYI Sales #68, “Sales Tax Exemptions for Governmental Purchases” for information about credit cards that display appropriate proof for the exemption to apply.

Charitable entities exempt from Colorado sales tax under CRS 29-26-114(1)(a)(II) (most IRC 501(c)(3) and (c)(19) qualified entities), may rent rooms for accommodations on behalf of persons employed by or performing charitable functions on behalf of the organizations. Any innkeeper may accept a copy of the exemption form issued by the Colorado Department of Revenue or the number of that exempt account (L98-nnnnn), and payment from the funds of the exempt organization as proof of the right to the exemption. If a charity based outside of Colorado requests exemption, but has no Department “98” number, the vendor should obtain the charities statement that they are qualified under IRC 501(c)(3), or that they are Veterans Organizations under IRC 501(c)(19) and proof of payment from organization funds.

CONVENTIONS FOR NON-TAXABLE ORGANIZATIONS:

Exempt entities or their associations may provide, and innkeepers may accept as proof of exempt status, a master list of exempt attendees. The master list must identify all individuals of a delegation from the exempt entity(ies) to an event employing an inn, hotel or motel for accommodations. Innkeepers may rely upon such master list as proof of exemption without requiring that the entity be the source of payment to the hotel. Organizations shall provide such master lists in good faith attempts to identify only individuals using accommodations officially on behalf of the exempt organization, within the organizations exempt purpose and with exempt entity funds. Any abuse of this right shall be cause for revocation, and upon notice of revocation of an organization's privilege, innkeepers will return to the individual transaction method of exemption verification stated in the immediately preceding paragraphs.

Innkeepers shall notify organizations using a master list of the requirements of Colorado law and require organizations to acknowledge that schools, charities and other entities may not extend their organizations exemption:

a) To any individual for personal use or benefit.

b) To any individual or group which reimburses the exempt organization for the cost of rooms used, whether directly, through pooling of individual funds or through donations made as a reimbursement for the cost of rooms.

DEPOSIT FORFEITS AND CANCELLATION CHARGES:

Charges made by a hotel or entity listed under C.R.S. 39-26-102(11) shall be classified for taxation as follows:

a) When the charge is greater than 50% of the daily reservation room rate, as a payment for the room and therefore fully taxable under C.R.S. 39-26-102(11), unless the room would be fully exempt for charitable, government or school use.

b) When the charge is 50% or less of the daily reservation room rate, it shall be classified as a cancellation charge not subject to sales tax.

SR-23 ICE

The sale of ice to other sellers of ice, or to sellers of soft drinks for use as a component part of a drink is a wholesale sale and, therefore, is not subject to sales tax.

The sale of ice to manufacturers, carriers, or any other consumer for the purpose of cooling or keeping perishable items of property or for other uses is taxable.

Ice sold for human, domestic home consumption is exempt from sales tax under 39-26-102(4.5), C.R.S. Ice sold to place food products in a marketable condition may be exempt under 39-26-102(20)(b)(II), C.R.S.

If ice is used for the sole purpose of becoming an ingredient or component of the finished product, as when it is used solely to supply all or a part of the water content of the sausage and luncheon meats, the sale of the ice is a sale for resale. If the ice is not purchased for that sole purpose and the purchase is not otherwise exempt, as in the case of a purchase for resale, then the purchase is subject to tax.

SR-24 INITIAL USE OF PROPERTY

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item will be resold later in either its original or altered form. A tax-free purchase is taxable in full at the first time it is used by the purchaser for a nonexempt purpose. (Example: A junkman may not buy a new car tax-free under the theory that the car is going to be junked someday and resold through his business for scrap.)

SR-25 INSURANCE COMPANIES

Insurance companies are not exempt from sales or use tax on purchases of tangible personal property for their use or consumption.

Purchases of articles by an insurance company to replace insured damaged property are subject to tax. Articles purchased by the insured with the proceeds of a damage claim settlement received from an insurance company are subject to tax.

SR-26 JANITORIAL SERVICES

Items such as hand soaps, paper towels, toilet tissue, and disinfectants which are furnished under a service contract and which are billed to the customer as a separate and distinct item from the service that is performed, are considered retail sales of tangible personal property. Sales tax shall be collected from the customer and remitted by the janitorial service.

If such consumable items are not separately stated but are included in the janitorial service contract, the janitorial service shall be deemed to be the user or consumer of the products and shall pay sales or use tax at the time of purchase.

No sales or use tax is applicable to the charge for service rendered.

SR-27 LINEN SERVICES

Items such as hand soaps, paper towels, toilet tissue, and disinfectants that are furnished by a linen service company under a service contract and consumed at the place of delivery and that are enumerated on the linen service company's delivery ticket are considered property sold at retail and sales tax shall be paid by the customer and remitted by the linen service company. If such consumable materials are not segregated on the delivery ticket, sales or use tax is payable by the linen service company at the time it purchases the items.

Providing laundered linens or uniforms, pickup of soiled linens or uniforms and relaundering and redelivery is generally considered a service and, therefore, the provisioning of that service is exempt from sales tax. However, the linen service provider is considered the user of such items and must pay sales or use tax on the purchase of all equipment, linens, uniforms, similar tangible personal property, replacement or repair materials, soaps, starch, cleaners, hangers, bags, wrap, twine or other consumables used in the performance of the service, whether or not the consumables are delivered to the customer.

A linen service provider who owns the linens, uniforms and other similar tangible personal property provided to the customer may choose to treat the provisioning of such tangible personal property as the rental of such property. If the linen service provider elects to treat the transaction as a rental, the provider

can purchase this tangible personal property (including linens, uniforms, hangers, bags, wrap, twine and other tangible personal property delivered to the customer) free of sales tax, but the provider must collect sales tax from the customer on each rental payment, calculated on the full rental price charged, including delivery. Soap, starch, cleaners, water, and other similar tangible personal property consumed by the linen service provider are not exempt from tax when purchased because these are used and consumed by the provider, not the customer. A linen service provider changing from one status to another must notify the Department, distinguish all purchases on a “before and after” change in basis, and cannot claim refund for tax paid on laundered items purchased while operating under the rule applicable to a provider.

SR-28 MAINTENANCE AND DECORATING SERVICES

Persons engaged in the business of rendering renovation services, such as painters and paper hangers, floor waxing services and others similarly engaged in repairing and servicing tangible personal or real property under a maintenance or service contract, are rendering a service and are considered the users of the articles used or consumed in such service and must pay sales or use tax on these articles at the time they are purchased.

No sales or use tax applies to charges made for these services.

SR-29 MANUFACTURERS AND PREFABRICATORS ACTING AS CONTRACTORS

A manufacturer or prefabricator may contract to build into real property that which he manufacturers or prefabricates. If the contract provides for the transfer of title to the materials prior to the time the materials are built into the real property, and if the material price is separately stated from the installation price, the manufacturer will be considered to have sold the material, therefore, sales tax must be charged only on the selling price of the material. If not properly segregated, the amount included for installation is also part of the taxable price.

If a manufacturer or prefabricator builds materials into real property and title to the materials does not pass until incorporated in the real property, the manufacturer is a contractor contemplated in the special regulation for retailer-contractors and then must follow those rules and pay use tax based on the acquisition cost of the goods withdrawn from inventory, payable at the time of such withdrawal. (However, see Contractors for the tax treatment of an over-the-counter sale of a complete unit.)

SR-30 MODULAR OR SECTIONAL HOMES

A “modular or sectional home” is a factory-built structure (1) that is built to a customer's specifications or inventory standards; (2) that is not titled; (3) that may be approved for HUD/FHA long-term financing; (4) that complies with conventional residence building codes; and (5) that is separate from its delivery chassis.

A manufacturer or dealer who enters into a single contract with the customer is a construction contractor if the contract requires the manufacturer or dealer to sell and install the structure by incorporating it into the realty of the customer before the title to the structure is passed. The manufacturer or dealer is considered to be the final user or consumer of the materials and supplies incorporated into the real estate under the contract. (See Special Regulation for “Contractors” regarding the payment of sales tax.)

A manufacturer or dealer who merely sells a modular or sectional home to a customer and does not at the time agree to incorporate it into the realty of the customer is considered a retailer and is required to charge sales tax on 52% of the sales price of the structure. (Effective June 7, 1979.)

A modular and sectional home manufacturer or dealer may be both a contractor and a retailer. (See Special Regulation for “Contractors” as it is related to retail-contractors.)

SR-31 MORTICIANS

Morticians are considered to be rendering services and making sales of tangible personal property, and shall collect sales tax in accordance with the following rules:

(1) If a funeral service is contracted for in one lump sum, with no itemizations, sales tax shall be imposed on the entire amount.

(2) If a funeral service is contracted for in such a manner that the charges for such articles as caskets, urns, vaults, shipping boxes, clothing, etc., are separately stated from the charges for such services as music, police escort, clergy honorarium, etc., sales tax shall be imposed only upon the selling price of the articles.

The fact that the remains are consigned to a common carrier for delivery elsewhere, whether inside or outside of Colorado does not change the fact that the articles were first used in Colorado and therefore a Colorado taxable sale. These rules apply to all sales of funeral services and related tangible personal property within the state.

Articles purchased and not to be resold in the normal course of business are subject to tax at the time of purchase. Tax free purchases for resale, when removed from inventory and used in the regular course of his business, must be included in the consumers use tax return for the month in which such articles are removed from inventory.

SR-32 NEWSPAPERS, MAGAZINES AND OTHER PUBLICATIONS

The sale of newspapers as defined in C.R.S. 1973, 24-70-102, is exempt from sales and use tax. The referenced section reads as follows:

“Every newspaper printed and published daily, or daily except Sundays and legal holidays, or which shall be printed and published on each of any five days in every week excepting legal holidays and including or excluding Sundays, shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three times each week shall be considered and held to be a tri-weekly newspaper; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semi-weekly newspaper; and every newspaper printed and published at regular intervals once a week shall be considered and held to be a weekly newspaper.”

This exemption on sales of newspapers may not be extended to include: magazines, trade publications or journals, credit bulletins, advertising pamphlets, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing service or listings, publications that include an updating or revision service, book or pocket editions of books or other newspapers not otherwise qualifying under the above paragraph.

A publisher who only makes sales of newspapers is not required to obtain a store license or a sales tax license. The publisher shall pay sales or use tax upon all purchases of tangible personal property, except newsprint, printers ink, and electricity or gas used in the production of the newspaper product. If the newspaper publisher makes retail sales of other articles delivered in Colorado, he shall obtain a store license or a sales tax license and collect sales tax, and may purchase such articles tax free for resale.

Magazines, periodicals, trade journals, etc., are tangible personal property whose retail sale is taxable.

Subscriptions to such publications taken within this state and sent to a publishing house outside the state, where the publication is mailed directly to the subscriber, are subject to the retailer's use tax. Where such publications are printed and sold within this state, the selling price (subscription price) is taxable. If the publication is printed in Colorado and delivery is made out of Colorado, the sale is not taxable.

Trade journals, advertising pamphlets, circulars, etc., which are to be distributed free of charge and are distributed by means of house to house delivery are not exempt from sales tax. However, items attached

to or inserted in and distributed with newspapers, or which are considered “direct mail advertising materials”, as this term is defined in the sales tax statutes, are exempt from sales tax, effective September 1, 1992.

Organizations which produce and distribute free trade publications, etc., are deemed to be purchasers for their use or consumption and are subject to tax based on the purchase price of the tangible personal property used.

SR-33 OPTICAL SALES AND SERVICES

Eyeglasses, lenses, frames, contact lenses, and similar articles, together with cases or similar containers used to transfer the property to the customer, when dispensed under a prescription or other written order of a legally qualified member of the healing arts are considered to be prosthetic devices and exempt from tax.

Sunglasses, reading glasses, binoculars, telescopes, and similar articles not dispensed under a qualified prescription, are subject to tax.

SR-34 PHOTOFINISHERS

Photofinishers are engaged in the business of selling tangible personal property to their customers and such sales are taxable. Purchases of materials that become ingredients or component parts of the finished picture, such as mounts, frames, and sensitized paper are not taxable because these items are purchased by the photofinisher for resale. Conversely, purchases of materials that do not become a part of the product sold to the customer are taxable to the photofinisher.

SR-34.5 PHOTOGRAPHERS

A photographer is performing a service subject to provisions of the Service Enterprises in the Special Regulations. If this services is specifically bargained for without regard to the tangible personal property involved, and if the value of the service is greater than the property transferred, no tax is collected from the purchaser but the photographer must pay tax on purchases of materials used to perform this service. Because the photographer is providing a service and not manufacturing photographs all equipment and cameras used by the photographer are subject to sales tax upon their purchase.

SR-35 PRINTERS AND PRINTING

Sales of catalogues, books, letterheads, bills, envelopes, folders, advertising circulars, and other printed matter are taxable retail sales if the purchaser does not resell the articles but uses or consumes them as by distributing them free. Except as herein stated, a printer may not deduct from the selling price any charge for labor or service in performing the printing, even though the labor or service charges may be billed separately from the charge for stock. The labor or service is expended in the production of the article sold; consequently, it is manufacturing labor incorporated in the product.

If separately stated on the invoice the services of typesetting, color separation, and design, art and camera mechanicals performed by a printer or his subcontractor for a customer or another printer is not taxable.

On commercial printing of postal cards or stamped envelopes purchased from the United States Postal Service, the amount subject to tax does not include the amount of postage involved.

Printed matter which is partially printed, invoiced to the customer, held in stock for further imprinting, and finally invoiced for subsequent imprinting is taxable on the full price charged by the printer for the item. Sales tax must be collected on the selling price of each part of the job. The subsequent imprinting before delivery is deemed to be completion of the initial sale, not a separate transaction.

Exempt purchases of tangible personal property for resale include:

(1) **Paper:** Newsprint; stock on which the finished product is printed and delivered to the customer; and wrapping materials for finished products sold to customers.

(2) **Ink:** Printers ink, ink additives, and overprint varnishes.

(3) **Chemicals:** Anti-offset sprays, fountain etch solutions, gum solutions, and all component chemicals when used with the above materials.

(4) **Materials:** Padding compound, stitching wire and staples, and bookbinders tape.

(5) **Pre-press preparation materials:** Light sensitive film, plates and proofing materials. Said exemption shall be allowed when the procedures as stated below are complied with.

Printers who are just performing a service will be subject to those rules given in the Special Regulations for “Service Enterprises”. Printers ink and newsprint are exempt under C.R.S. 1973, 39-26-102(21), but all other above listed items are subject to use tax when applied to property which is not sold.

Pre-press preparation materials (which shall be defined as light sensitive films, plates, and proofing materials) shall qualify as exempt purchases of tangible personal property to the extent such items are utilized for the production of a specific product for a specific customer and title passes to the customer as part of the total sale, and adequate cost records for the particular job showing amount of pre-press preparation material are retained by the printer. In addition, if the final product is tax exempt because it is being shipped out of state by common carrier or otherwise, it will be necessary for the printer to be responsible for the amount of use tax to the Department. The basis for this requirement is that possession was taken in Colorado by the printer as agent for the customer of the pre-press preparation materials in order to produce the final product which itself is exempt from tax because it is shipped in interstate commerce. If separately invoiced as herein provided, pre-press preparation materials used in the production of a product sold and delivered to a tax exempt entity will not be deemed subject to the payment of use tax by the printer.

Except as herein stated with respect to out of state shipments, in order to avoid liability for the payment of use tax on pre-press preparation materials, the printer must maintain adequate records of such materials in detail as to each specific job, so that the indication of pre-press material designation on the ultimate billing can be determined upon audit and segregated from other pre-press materials, manufacturing aids or plant property. There must be an audit trail which clearly reflects the passing on to the customer of a particular item of pre-press preparation material and collection of sales tax on a particular invoice when such sales are subject to tax.

A printer may at times retain a customer's property in his place of business. When tangible personal property is retained in the printer's place of business, the department may examine the various records applicable to this property, such as who is liable for the payment of insurance and personal property tax on the property, who is allowed to deduct the depreciation expense on the property, and who benefits from salvage of the item, in making a determination of the ownership of the property.

SR-36 PRIVATE CLUBS

Private clubs such as country clubs, athletic clubs, fraternal organizations, or organizations of persons formerly in the armed services of the United States are subject to the tax when they sell tangible personal property at retail or do any of the other things subject to the tax as provided in the Act. This is true even though all transactions are with members.

SR-37 READY-MIX CONCRETE

Ready-mix concrete is taxable on the delivered price, which includes minimum load and transportation charges. Standby charges charged after arrival at the destination are not taxable if segregated on the customer's invoice.

SR-38 REPOSSESSED PROPERTY

If the repossessor of tangible personal property sold the property to the person from whom it was taken and remitted the tax on the total selling price, the retailer-repossessor may deduct the uncollected selling price from the gross sales on the sales tax return for the period during which the repossession occurred. Repossessed property must be held exclusively for resale by a person holding a valid sales tax license. The subsequent retail sale of the repossessed property is subject to sales tax.

No deduction or other credit may be taken from gross sales on account of the repossession when:

(1) The repossessed property is a motor vehicle. However, a deduction may be allowed when there is a seller-financed sales. See, 39-26-113(6), C.R.S.

(2) The retailer-repossessor reports sales tax on the cash basis.

(3) The retailer-repossessor reports sales tax on the accrual basis but elects under 39-26-102(5), C.R.S. to report on the cash basis the collections of such credit sales as that subject to repossession.

A seller is not liable for sales or use tax on the transaction of repossessing tangible personal property on which the seller retained a security interest so long as the repossessed property is placed in the repossessor's inventory and held for resale (at retail or wholesale). Repossessed property converted to personal or business use is subject to sales or use tax calculated at the fair market value at the date of conversion.

SR-39 SAND AND GRAVEL

Tax must be imposed on the delivered price of sand and gravel, including minimum load and transportation charges in accordance with the provisions of Regulation 26-102.7(a). Tax on charges for hauling materials to the customer's destination may be avoided only if all of the following conditions are met:

(a) The retailer has fixed and posted prices both for the material and for hauling. These prices must be completely independent of each other. In other words, the price of the material must be the same to the customer whether the retailer provides the hauling or the customer arranges for his own transportation. If the retailer provides the hauling, the charges must be clearly segregated on the customer's invoice;

(b) The customer must have the option to determine the means of transportation to this destination. There must be practical as well as economic alternatives available for the customer in terms of providers of transportation; and

(c) Regardless of who provides the transportation, the retailer and the customer must agree and acknowledge in writing that the sale of the materials takes place, and title to the goods transfers, at the retailer's place of business. The customer must acknowledge that he is the owner of the material being transported.

Stand-by charges made after arrival at the destination are not taxable if segregated on the customer's invoice.

Sand and gravel removed from the ground become tangible personal property and are subject to the

sales or use tax that applies to retail sales of tangible personal property. Sales of sand and gravel are taxable unless sold to a licensed vendor for resale.

The retailer of sand and gravel who removes sand and gravel stocks to fulfill his own construction obligations is subject to sales or use tax on the acquisition cost of the products used at the time of conversion to his own use or consumption.

Persons who purchase the right to remove sand and gravel from another's land are subject to a use tax on the purchase price of the sand and gravel when removed, unless the same is held for resale.

SR-40 SERVICE ENTERPRISES

Persons engaged in the business of rendering service are consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. Tax, accordingly, applies to the sale of the property to them. If in addition to rendering service they regularly sell tangible personal property to consumers, they are retailers with respect to such sales and they must obtain a license, file returns, and remit tax on such sales.

Example: A film company contracts to make a ski film for a firm owning a resort. The cost to the resort for the original film is $25,000. Additional reels may be purchased for $250.00 each. The $25,000 charge for the first reel of film is not subject to tax as the film company is charging for their services in producing tangible personal property, the transfer of which is incidental to the performance of the service. The sale of additional reels at $250.00 would, however, be subject to tax.

The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true objects of the contract; that is, if the real object sought by the buyer is the service per se, the transaction is not subject to tax even thought some tangible personal property is transferred. For example, a firm which performs business advisory, record keeping, payroll and tax services for small businesses and furnishes forms, binders, and other property to its clients, as an incident to the rendition of its services, is the consumer and not the retailer of such tangible personal property. The true object of the contract between the firm and its client is the performance of a service and not the furnishing of tangible personal property. Similarly, an idea may be expressed in the form of tangible personal property and that property may be transferred for a consideration from one person to another, however, the person transferring the property may still be regarded as the consumer of the property. Thus, the transfer to a publisher of an original manuscript by the author thereof for the purpose of publication is not subject to taxation. The author is the consumer of the paper on which he has recorded the text of his creation. However, the tax would apply to the sale of artistic expressions in the form of paintings and sculptures even though the work of art may express an original idea since the purchaser desires the tangible object itself; that is, since the true object of the contract is the work of art in its physical form.

When a transaction is regarded as a sale of tangible personal property, tax applies to the gross receipts from the furnishing thereof, without any deductions on account of the work labor, skill, thought, time spent, or other expense of producing the property.

A research and development contract is distinguished from a contract for the manufacture of a custom made item. In the latter, the research, design, etc., although necessary to the manufacture of the item, is incidental to the primary purpose of the contract. Generally, custom made items are for consumption or resale. The buyer wants the item for its intrinsic value as an item, and is not interested in the data developed in the course of its manufacture. In such contracts, the entire contract price is subject to tax if the tax applies. A person contracting for research and development is primarily contracting for information which is intangible. Generally, the person contracting for information is going to use it to manufacture and sell some item of tangible personal property.

The development of the information in a research and development contract is not a sale of tangible

personal property. It is a service. Since the information such as plans, design, and parts lists, etc., cannot ordinarily be conveyed orally, the information is conveyed on paper. The transfer of the information on paper is not a sale of tangible personal property and the transfer is incidental to the service of developing information. In certain instances, the information cannot be conveyed without the transfer of a prototype. In these cases, the transfer of the prototype is incidental to the transfer of the information and is not a sale of the prototype.

In a true research and development contract where a prototype is manufactured, the researcher (taxpayer) owes use tax on the materials used to construct the prototype since its was used to compile data, design, drawings, etc. The measure of the tax is the cost of the materials going into the manufacture of the prototype as well as all other materials consumed.

Contracts for research work which require only the development of ideas, plans, engineering data, etc., do not constitute sales of tangible personal property although models and drawings are furnished to convey such ideas.

If thereafter an entirely separate contract is entered into for the production of the finished product, tax applies to the gross receipts received from the sale of that finished product which gross receipts will not be deemed to include the charges for the drawings, visualizations, etc., performed under a separate agreement.

Example: Original construction plans - A $50 charge for original plans made according to the desires of each person interested in converting existing buses or van trucks into “house cars” would not be subject to tax. The total charge would be subject to tax if the plan sold was merely a duplicate of a plan drawn for a preceding customer. The planner is the consumer of the paper and other materials used to present the plan.

SR-41 TOOLS, JIGS, DIES, PATTERNS, MOLDS, ETC.

A person who makes and sells tools, jigs, dies, patterns, molds, or similar items to a purchaser for use in his manufacturing or processing, is making retail sales of the item and is required to collect and remit the sales tax. If the purchaser, after using such items, resells the tool, jig, etc. (for example, to the customer who purchases the purchaser's manufactured article), the resale of such tool, jig, etc. does not convert the initial sale to the purchaser to an exempt wholesale transaction. The initial purchaser purchased the article primarily for purchaser's own use and not for resale. The resale of the tool, jig, etc. to a customer after use by the initial purchaser is taxable.

Tools, jigs, dies, patterns, molds or other similar items sold to a manufacturer and that qualify as machinery or machine tools, or parts thereof, are exempt from tax. See, 39-26-114(11), C.R.S. for the general sales tax exemption and 30-6-106, C.R.S. for exemptions of such items in enterprise zones. Molds or similar machine tools are exempt when held and used by a subcontract parts producer if the tools would have been exempt in the hands of the manufacturer. Special districts, municipalities and counties have an option to exempt the sale of machinery and machine tools from their local taxes. See, Department publication DRP-1002 for a complete listing of local jurisdictions that exempt these items.

SR-42 2002 UPHOLSTERERS

An upholsterer who is engaged in the repair, recovering, reupholstering or similar work on a customer's property is engaged in the sale of tangible personal property and accordingly, will charge his customers sales tax on the tangible personal property used in this service. The upholsterer must separately state the tangible personal property and the service or labor charges on his billing to his customer.

A sale by the upholsterer of upholstery material, manufactured articles, or other tangible personal property to a retail customer, without service rendered in connection with the sale, is taxable on the full selling price of the property.

An upholsterer who purchases property which he upholsters and then offers for sale is required to charge sales tax on the full selling price of such property. The labor to process and prepare for sale to a customer is a taxable part of the transaction of sale. The labor to reupholster furniture previously owned by a customer is a service when the customer owns the furniture and the only property transferred sale is the upholstery fabric, staples and glue.

Upholstery material and other items of tangible personal property that become a part of the upholstered item may be purchased tax-free, but he must pay sales or use tax on those items used or consumed that do not become a part of the completed upholstered property.